16-505

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 88.

ANNA A. CLARKSON AND ROBERT L. CLARKSON, HER HUSBAND; HARRIET WETMORE, AND GEORGE W. WETMORE, HER HUSBAND; SAMUEL SANDS, JOSHUA SANDS, AND JOHN SANDS, PLAINTIFFS IN ERROR,

vs.

MARTHA B. STEVENS, JOHN STEVENS, EDWIN A. STEVENS, ROBERT L. STEVENS, CAROLINE B. STEVENS, CHARLES ALBERT STEVENS, RICHARD STEVENS; THEODORE F. RANDOLPH, GOVERNOR OF THE STATE OF NEW JERSEY; PITZ JOHN PORTER, BENJAMIN G. CLARK, AND WILLIAM W. SHIPPEN, COMMISSIONERS; WILLIAM W. SHIPPEN, SAMUEL R. DOD, MARY P. LEWIS, EDWARD P. C. LEWIS, HER HUSBAND; AND ROBERT GILCHRIST, ATTORNEY-GENERAL OF THE STATE OF NEW JERSEY.

IN ERROR TO THE COURT OF CHANCERY OF THE STATE OF NEW JERSEY.

[illegible] 18, 1870.

16-305

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 88.

ANNA A. CLARKSON AND ROBERT L. CLARKSON, HER HUSBAND; HARRIET WETMORE, AND GEORGE W. WETMORE, HER HUSBAND; SAMUEL SANDS, JOSHUA SANDS, AND JOHN SANDS, PLAINTIFFS IN ERROR,

vs.

MARTHA B. STEVENS, JOHN STEVENS, EDWIN A. STEVENS, ROBERT L. STEVENS, CAROLINE B. STEVENS, CHARLES ALBERT STEVENS, RICHARD STEVENS; THEODORE F. RANDOLPH, GOVERNOR OF THE STATE OF NEW JERSEY; FITZ-JOHN PORTER, BENJAMIN G. CLARK, AND WILLIAM W. SHIPPEN, COMMISSIONERS; WILLIAM W. SHIPPEN, SAMUEL B. DOD, MARY P. LEWIS, EDWARD P. C. LEWIS, HER HUSBAND; AND ROBERT GILCHRIST, ATTORNEY-GENERAL OF THE STATE OF NEW JERSEY.

IN ERROR TO THE COURT OF CHANCERY OF THE STATE OF NEW JERSEY.

FILED OCTOBER 16, 1879.

16-305

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 88.

ANNA A. CLARKSON AND ROBERT L. CLARKSON, HER HUSBAND; HARRIET WETMORE, AND GEORGE W. WETMORE, HER HUSBAND; SAMUEL SANDS, JOSHUA SANDS, AND JOHN SANDS, PLAINTIFFS IN ERROR,

vs.

MARTHA B. STEVENS, JOHN STEVENS, EDWIN A. STEVENS, ROBERT L. STEVENS, CAROLINE B. STEVENS, CHARLES ALBERT STEVENS, RICHARD STEVENS; THEODORE F. RANDOLPH, GOVERNOR OF THE STATE OF NEW JERSEY; FITZ-JOHN PORTER, BENJAMIN G. CLARK, AND WILLIAM W. SHIPPEN, COMMISSIONERS; WILLIAM W. SHIPPEN, SAMUEL B. DOD, MARY P. LEWIS, EDWARD P. C. LEWIS, HER HUSBAND; AND ROBERT GILCHRIST, ATTORNEY-GENERAL OF THE STATE OF NEW JERSEY.

IN ERROR TO THE COURT OF CHANCERY OF THE STATE OF NEW JERSEY.

FILED OCTOBER 16, 1879.

SUPREME COURT OF THE UNITED STATES.

No. 88.

ANNA A. CLARKSON AND ROBERT L. CLARKSON, HER HUSBAND; HARRIET WETMORE AND GEORGE W. WETMORE, HER HUSBAND; SAMUEL SANDS, JOSHUA SANDS, AND JOHN SANDS, PLAINTIFFS IN ERROR.

VS.

MARTHA B. STEVENS, JOHN STEVENS, EDWIN A. STEVENS, ROBERT L. STEVENS, CAROLINE B. STEVENS, CHARLES ALBERT STEVENS, RICHARD STEVENS; THEODORE F. RANDOLPH, GOVERNOR OF THE STATE OF NEW JERSEY; FITZ JOHN PORTER, BENJAMIN G. CLARK, AND WILLIAM W. SHIPPEN, COMMISSIONERS; WILLIAM W. SHIPPEN, SAMUEL B. DOD, MARY P. LEWIS, EDWARD P. C. LEWIS, HER HUSBAND, AND ROBERT GILCHRIST, ATTORNEY-GENERAL OF THE STATE OF NEW JERSEY.

IN ERROR TO THE COURT OF CHANCERY OF THE STATE OF NEW JERSEY.

INDEX.

	Original.	Print.
Title	1	1
Original bill	2	1
Information	18	11
Answer (to information) of Theodore F. Randolph et al., commissioners	38	22
Answer (to information) of William W. Shippen et al., executors of Edwin A. Stevens	40	23
Answer of Martha B. Stevens	49	28
Answer of Anna A. Clarkson et al.	58	34
Answer of John Stevens et al., infants, by Martha B. Stevens, their guardian	70	41
Letter of William W. Shippen to W. L. Clarkson	71	42
Admission of infancy, want of actual knowledge, &c., of some of defendants	72	43
Testimony	73	43
Samuel B. Dod's testimony, direct examination	74	44
cross-examination	77	45
William W. Shippen's testimony, direct examination	78	46
cross-examination	81	47

SUPREME COURT OF THE UNITED STATES.

No. 88.

ANNA A. CLARKSON AND ROBERT L. CLARKSON, HER HUSBAND; HARRIET WETMORE AND GEORGE W. WETMORE, HER HUSBAND; SAMUEL SANDS, JOSHUA SANDS, AND JOHN SANDS, PLAINTIFFS IN ERROR,

vs.

MARTHA B. STEVENS, JOHN STEVENS, EDWIN A. STEVENS, ROBERT L. STEVENS, CAROLINE B. STEVENS, CHARLES ALBERT STEVENS, RICHARD STEVENS; THEODORE F. RANDOLPH, GOVERNOR OF THE STATE OF NEW JERSEY; FITZ JOHN PORTER, BENJAMIN G. CLARK, AND WILLIAM W. SHIPPEN, COMMISSIONERS; WILLIAM W. SHIPPEN, SAMUEL B. DOD, MARY P. LEWIS, EDWARD P. C. LEWIS, HER HUSBAND, AND ROBERT GILCHRIST, ATTORNEY-GENERAL OF THE STATE OF NEW JERSEY.

IN ERROR TO THE COURT OF CHANCERY OF THE STATE OF NEW JERSEY.

INDEX.

	Original.	Print.
Title	1	1
Original bill	2	1
Information	18	11
Answer (to information) of Theodore F. Randolph et al., commissioners	38	22
Answer (to information) of William W. Shippen et al., executors of Edwin A. Stevens	40	23
Answer of Martha B. Stevens	49	28
Answer of Anna A. Clarkson et al	58	34
Answer of John Stevens et al., infants, by Martha B. Stevens, their guardian	70	41
Letter of William W. Shippen to W. L. Clarkson	71	42
Admission of infancy, want of actual knowledge, &c., of some of defendants	72	43
Testimony	73	43
Samuel B. Dod's testimony, direct examination	74	44
cross-examination	77	45
William W. Shippen's testimony, direct examination	78	46
cross-examination	81	47

	Original.	Print.
Exhibits:		
C 6. (Contract of February 10, 1843, between A. P. Upshur and R. L. Stevens)	82	48
Contract of November 14, 1844, between J. Y. Mason and R. L. Stevens	86	50
Contract of September 9, 1848, between J. Y. Mason and R. L. Stevens	95	55
Statement of bills paid on account of battery	97	56
M. de Lome and letters of June 24	98	56
Exhibit C 10. (Statement by General McClellan to William W. Shippen	99	57
Will of Robert L. Stevens	106	61
Resolutions of Congress:		
Releasing battery to heirs of R. L. Stevens	104	60
Giving consent to reception of battery by State of New Jersey	104	60
Resolutions of New Jersey legislature:		
Accepting battery	105	60
Authorizing sale of battery	107	61
Decrees:		
Final decree of court of chancery	108	62
Final decree of court of errors and appeals	118	66
Petition of appeal to court of errors	116	66
Order of severance of Mary Sands	119	67
Opinions:		
Of chancellor	121	67
Of court of errors and appeals	134	74
Petition for writ of error	146	79
Writ of error	150	80
Affidavit of service of citation	154	81
Citation	156	82
Bond	159	83
Return to writ of error	163	84
Clerk's certificate	163	84

1 Supreme Court of the United States.

ANNA A. CLARKSON AND ROBERT L. CLARKSON, her husband, Harriet Wetmore and George W. Wetmore, her husband, Samuel Sands, Joshua Sands, and John Sands, plaintiffs in error,
v.
ROBERT GILCHRIST, ATTORNEY-GENERAL OF the State of New Jersey, Martha B. Stevens, John Stevens, Edwin A. Stevens, Robert L. Stevens, Caroline B. Stevens, Charles A. Stevens, Richard Stevens, Theodore F. Randolph, governor of the State of New Jersey, Fitz-John Porter, Benjamin G. Clark, and William W. Shippen, as commissioners, and William W. Shippen, Samuel B. Dod, Mary P. Lewis, and Edward P. C. Lewis, her husband, defendants in error. } In error.

2 In chancery of New Jersey.

BETWEEN MARTHA B. STEVENS ET AL., COMplainants,
and
WILLIAM W. SHIPPEN ET AL., DEFENDANTS. } On bill, &c.

Bill of complaint.—Filed December 21, 1868.

To the honorable Abraham O. Zabriskie, chancellor of the State of New Jersey:

Humbly complaining, showeth unto your honor your oratrix, Martha B. Stevens, as an executrix of the last will and testament of her late husband, Edwin A. Stevens, deceased, and in her own right as one of the legatees of the residuary estate in said will and codicil mentioned; and your orators, John Stevens, an infant of the age of twelve years, by his next friend, the said Martha B. Stevens; Edwin Augustus Stevens, an infant of the age of ten years, by his next friend, the said Martha B. Stevens; Robert L. Stevens, an infant of the age of four years, by his next friend, the said Martha B. Stevens; Julia Augusta Stevens, an infant of the age of five years, by her next friend, the said Martha B. Stevens; Caroline B. Stevens, an infant of the age of eight years, by her next friend, the said Martha B. Stevens; Albert Stevens, an infant of the age of two years, by his next friend, the said Martha B. Stevens; and
3 Richard Stevens, an infant of four months old, by his next friend, the said Martha B. Stevens; that your oratrix, the said Martha, is the said widow of the said Edwin A. Stevens, deceased, and your orators and oratrices, the said infants, and Mary P. Garnett, hereinafter mentioned, are the children and heirs-at-law of the said Edwin A. Stevens, deceased, as well as residuary legatees in said will mentioned; that the said Edwin A. Stevens, deceased, in his lifetime, being seized in fee simple of lands and tenements in Weehawken and Hoboken, and, as they suppose, elsewhere in the State of New Jersey, and entitled to a large amount of personal estate, did, on or about the 5th day of August, in the year 1865, make his last will and testament in writing, which was by him

duly signed and published, and attested in such manner as by law is required for devising real estate, which said last will is in the words and figures following:

In the name of God, amen. I, Edwin A. Stevens, of the township of Weehawken, in the county of Hudson, and State of New Jersey, being of a sound and disposing mind, memory, and understanding, for which blessing I thank God, do hereby make, publish, and declare this to be my last will and testament, hereby revoking all former wills heretofore made by me.

Item.—It is my will, and I do order, that all my just debts and funeral expenses shall be duly paid and satisfied so soon as conveniently can be after my decease.

Item.—I do hereby give and bequeath unto my beloved wife, Martha B. Stevens, the sum of one hundred thousand dollars, to her, her heirs and assigns forever.

Item.—I do hereby give and bequeath unto each of my children, John Stevens, Edwin Stevens, Robert Stevens, Mary P. Garnett, and Julia Augusta Stevens, and Carolina B. Stevens, the sum of one hundred thousand dollars, to them, their heirs and assigns forever.

Item.—It is my will, and I do order, that my said wife, Martha B. Stevens, be paid annually, during the term of her natural life, by my executors, hereinafter named, an income equivalent to one-third
4 of the profits of the remainder of my estate, after deducting the ———— hundred thousand dollars hereinbefore bequeathed.

Item.—All the rest and residue of my estate, both real and personal, whatsoever and wheresoever the same may be, I do hereby give, devise and bequeath unto my said wife and children, to be divided amongst them in the following proportions, viz:

To my said wife, two-elevenths of my estate; to each of my sons, two-elevenths of my estate; to each of my daughters, one-eleventh of my estate, to them, their heirs and assigns forever, it being expressly understood that the portions of said residue of my estate herein devised and bequeathed to my said children shall be subject to the payment of the said income hereinbefore directed to be paid to my said wife during her life.

Item.—I do hereby constitute and appoint my said wife, Martha B. Stevens, guardian of my children, John, Edwin, Robert, and Julia Augusta, and Carolina B., it being my express wish that she shall have the entire management and control of them, without any interference from any person whatsoever.

Item.—I do hereby constitute and appoint my wife, Martha B. Stevens, her brother, Samuel Dodd, of Wilkesbarre, Pennsylvania, and William W. Shippen, of Hoboken, executors of this my last will and testament, authorizing and empowering them to sell any or all my real estate, either at private or public sale, whensoever they may deem it expedient and beneficial so to do.

In witness whereof I have hereunto set my hand and seal this fifth day of August, in the year of our Lord one thousand eight hundred and sixty-five.

[L. S.] E. A. STEVENS.

Signed, sealed, published and declared by the said Edwin A. Stevens to be his last will and testament, in the presence of us, his chosen witnesses, who, in his presence, in the presence of each other, and at his request, have hereunto set our names as such attesting witnesses—
5 on 1st page, between lines 23 and 24, "Carolina B. Stevens"

interlined; on 2d page, line 5, "six" erased and "seven" interlined; on lines 13, 14, 15 and 17, "tenths" erased and "elevenths" interlined; and on the last line, after the words "Julia Augusta," the words "and Carolina B." added before execution—

EDW. MARTIN, of Hoboken.
FREDC. B. OGDEN, of Hoboken.

And the said Edwin A. Stevens, in his lifetime, and on or about or shortly after the date of his last will, did endorse upon said will and sign a paper, attested by but one witness, in the words following:

Whereas under my direction, two school-houses have been erected in Hoboken, on land belonging to the Hoboken Land and Improvement Company, my express wish is that the said company shall convey the fee of the same to the city of Hoboken for consideration of one dollar, the same to be used by the city solely for the purpose of public education.

E. A. STEVENS.

Witness: FREDC. B. OGDEN.

And continuing to be seized in fee simple of the said land and tenements, and entitled to said personal estate, the said Edwin A. Stevens, in his lifetime, did, on or about the 15th day of April, in the year 1867, make a codicil to his said will, which codicil was duly signed and published by him, and attested in such manner as by law is required for devising real estate, which said codicil is in the words and figures following:

I, Edwin A. Stevens, in the foregoing will named, do by this codicil thereto, declare my will to be, to give, and I do hereby give, devise, and bequeath to my son, Albert Bayard Stevens, one hundred thousand dollars, so that he may be on an equality with the rest of my children, to each of whom I have, in my said will, given the like sum; and my will is that every child I shall hereafter have shall also be upon a like equality with my present children, and each of such children that may hereafter be born be entitled to a like sum of one hunered thousand dollars out of my estate; all which bequests or devises hereinabove made and those to my wife and children in the foregoing will, of the said sum of one hundred thousand dollars, shall take effect before any other gift in said will or hereinafter made

6

To insure the setting apart of each of said legacies of one hundred thousand dollars each, and that the same may conveniently be raised and paid out of my estate, I direct my executors to purchase of the Hoboken Land and Improvement Company such productive real estate of said company, and such of the bonds and mortgages of said company, rents and other assets of said company, which produce a revenue above expenditures, as will, with productive property standing in my own name, amply cover at least eight hundred thousand dollars. If such property so purchased and that last mentioned shall not be sufficient, my executors shall make up the deficiency, by setting apart any railroad stock or canal stocks and bonds which I may own at my death. The purchase of said company to be made by assigning to it so much of the stock thereof standing in my name at my death as shall be proper for the purpose.

It is my will that none of my now infant children shall have the control or management of their legacies, or of the income thereof, or of any property devised or bequeathed to them, the sons not until they arrive at the age of twenty-four years, nor the daughters till they arrive at the

age of twenty-two years; this provision shall apply to any share or income one child may inherit from another. My wife shall be guardian of my child Albert Bayard, as well as of my other children, born and to be born; but my desire is that my executors shall, until the same become payable to my children, take care of all money and property devised and bequeathed to any of my said children, except the income of the respective legacies of one hundred thousand dollars to each of them, which income their mother shall receive for their support and education until the children respectively shall be entitled to the control and management of the property devised and bequeathed.

7 I give, devise, and bequeath Castle Point and the homestead lot, which contains about thirty acres, and the houses thereon, to my wife for her life.

My executors shall divide Castle Point and the homestead lot and the houses thereon into four convenient plots; they need not make the said plots of equal value, and my wife shall determine which one of my sons shall have the plot on which my mansion-house stands; the other three plots my executors shall set off—one to each of my three sons other than the one to whom the mansion-house plot is assigned by my wife; the estate of each son in said plot shall be a fee simple.

After setting apart sufficient of my estate to pay the said eight legacies of one hundred thousand dollars each, I direct my executors to purchase of the said the Hoboken Land and Improvement Company, by assigning sufficient of my stock in that company for that purpose—and cause to be conveyed to my wife, Martha B. Stevens, William W. Shippen, and Samuel Dodd, and to their heirs and assigns forever, to hold as joint tenants and not as tenants in common, in trust as hereinafter mentioned—the two school-house lots as now fenced in, situate in Garden street, Hoboken, and the school-houses thereon, and all of the furniture and property of said company on said lots or in said school-houses; and I give to them—in manner aforesaid to be held—all my own right, title, and interest in said lots, and houses, and property.

I direct and empower the acting trustee or trustees under this trust (whether the original trustees herein named or the survivors or survivor of them or his, her, or their successor or successors), at any time or times when one or two of said trustees, or his, her, or their successors or sucessor, shall be dead or have ceased to act, to appoint one or two new trustees in his, her, or their stead, who shall have died or ceased to act; and, by advice of counsel, my trustee or trustees, in whom the legal title shall be vested, shall convey and assure to the appointing trustee or trustees and new trustee or trustees the said property in fee simple as joint tenants, and not as tenants in common, in trust, and such conveyance and assurance shall be made as often as there is a new appointment; the trustee or trustees for

8 the time being shall permit the city authorities of Hoboken (or such other authorities as shall at any time have the legal power over the common schools in the present boundaries of Hoboken, which is now possessed by the said city authorities of said city) to use and occupy the said property for the uses and purposes to which they have been heretofore devoted; that is to say, to no other use or purpose than the furnishing there a free, plain, and practical English education to such of the children resident within said boundaries, from time to time, as said authorities shall permit to go there for said purposes. Said acting trustee or trustees for the time being to overlook the said use and occupation, and see that the said property is not diverted from the uses intended, and if in the judgment of said acting trustee or trustees it is

so diverted the said property shall fall into the residue of my estate from the time of such diversion, such acting trustee or trustees for the time being, however, being solely vested with the right of taking advantage of such diversions, and in case he, she, or they obtain possession of the property to hold the same in trust for the residuary devisees and legatees.

And I do further give, devise, and bequeath to my said wife, Martha B. Stevens, William W. Shippen, and Samuel Dodd, and to their heirs and assigns forever, to hold as joint tenants, and not as tenants in common, in trust, as hereinafter mentioned, all that block of land in Hoboken bounded by Hudson street, River street, Fifth and Sixth streets (excepting such interests therein, if any, as I may not own at my death), and one hundred and fifty thousand dollars in the stock and bonds of the Morris and Essex Railroad Company, reckoning the same at par; that is to say, one-half of that sum in the first-mortgage bonds of said company and one-half in the said stock.

I direct and empower the acting trustees or trustee under this trust (whether the original trustees herein named or the survivors or survivor of them, or his, her, or their successor or successors), at any time or times when one or two shall be dead or have ceased to act, to appoint one or two new trustees in his, or her, or their stead, who shall have died or ceased to act; and, by advice of counsel, my trustee or trustees in whom
9 the legal title shall be vested shall convey, assure to, and vest in said three trustees (the appointing as well as the new trustee or trustees) the said trust property in fee simple as joint tenants, and not as tenants in common, in trust. And this trust is this: That upon said land, at such time as the acting trustee or trustees shall think proper, certainly within two years after my death, he, she, or they shall, out of the proceeds of said personal property (to be procured by sale or other prudent disposition, investment, use, or appropriation thereof, in the discretion of the trustee or trustees for the time being), erect, of some substantial but economical material, as substantial and economical as trap-rock, a plain building or buildings, suitable for the uses of an institution of learning, which I direct my acting trustee or trustees for the time being, out of the means herein provided, and such as shall proceed therefrom, with all convenient speed, and within three years after my decease, to establish there—employing, paying, and discharging at his, her, or their discretion, the officers and tutors and servants thereof—and forever to manage and control at his, her, or their discretion, but for the benefit, tuition, and advancement in learning of the youth residing, from time to time, hereafter within the State of New Jersey; but my said acting trustee or trustees shall, from time to time, decide who of said youth shall receive the benefit thereof, and direct the tuition in said institution, and make all proper by-laws, rules, and regulations for the management of the officers, tutors, servants, and scholars connected with said institution. The tuition is not to be wholly free unless to such youth as said acting trustee or trustees shall direct; nor is it my intention that the cost of tuition of any youth shall be wholly paid by him or her. The proportion of payment by each youth I leave to the discretion of the acting trustee or trustees. It is my intention that the institution hereby directed and created shall be perpetual, and that the above-mentioned original trustees and their successors shall forever continue and be the governors thereof, and have the superintendence of the same; and it is my will and desire that, if it cannot be legally done according to my above intention by them without an act of the legislature of the State of New Jersey, they will,

as soon as possible, and certainly within three years after my
10 decease, apply for an act of the legislature to incorporate them for the purpose above specified, and to effectually provide for the establishment and maintenance of said institution with the means which I have devoted, by this my will and testament, to the said purpose; and I do further declare it to be my will and intention that the said real and personal property hereinbefore and hereinafter devised and bequeathed to my said trustees for said purposes shall, at all events, be applied for the uses and purposes above set forth; and it is my desire that all courts of law and equity will so construe this, my will, as to have the said property, real and personal, appropriated to the above uses, and that the same shall in no case, for want of legal form or otherwise, be so construed as that my relations, heirs, devisees, or legatees, or any other persons, shall inherit, take. possess, or enjoy said real and personal property hereinbefore and hereinafter devised and bequeathed for said purposes, except in the manner and for the uses hereinabove specified.

Out of the residue of my estate (excluding Castle Point and the homestead lot and the house thereon) remaining after the payment of my debts, the said eight hundred thousand dollars in legacies, and the appropriation of so much thereof as is necessary to answer the foregoing charitable bequests and devises, I empower my executors to apply not exceeding the sum of one million dollars to finish, on my general plans, as near as may be, in the discretion of my said executors, the battery known as the Stevens Battery, and for the accomplishment of the said object I give to them the use of the dock and yards and basin heretofore appropriated to the said battery, and all the material provided for said battery. When said battery shall be finished, I direct my executors to offer the same to the State of New Jersey as a present, to be disposed of as the said State shall deem proper; and if not accepted by the said State, I direct my executors to sell the same, and the proceeds thereof shall fall into the residue of my estate.

I do also, out of the said last-mentioned residue of my estate (excluding Castle Point and the homestead lot and houses thereon)
11 remaining after the payment of my debts, the said eight hundred thousand dollars in legacies, and the appropriation of so much of my estate as is necessary to answer the before-mentioned charitable bequests and devises, and the appropriation for the steam battery, give, devise, and bequeath to my said trustees of said institution of learning, and direct my executors to pay to them, within five years after my decease, such sum of money, not exceeding five hundred thousand dollars, as the said trustees of said institution of learning, in their discretion, shall think necessary to be set apart, invested, and appropriated to and for the purpose of forever maintaining the said institution of learning, for the purposes before described, so that the same be liberally maintained out of the income and interest of such sum, and said sum of money, and the interest and income thereof, shall be subject to all the trusts hereinbefore declared with respect to the said institution of learning, and the property appropriated hereinbefore for the erection, maintenance, and establishment thereof; and I do, with reference to the said sum, and interest and the income thereof, declare my desire and intention to be the same as I have before fully expressed with reference to the property before devised and bequeathed for the same purposes.

The failure of any of the charitable devises and bequests in this, my will, shall disturb no other part of my will, nor do I intend by any act

of my own in carrying out, as I may do in part during my life, the plan of the institution of learning laid down for my trustees to execute, to impair the power and authority I have hereinbefore given to them, but desire them to carry out the designs expressed in my will so far as I shall not during my life proceed in the same.

The devise and bequest in my original will to my wife, of the income equal to the one-third of the profits of the remainder of my estate in that devise and bequest mentioned, I intend and it is my will shall be of the remainder of my estate, after meeting the demands upon it in this codicil provided for.

The rest and residue of my estate, both real and personal, whatsoever and wheresoever the same may be, subject to the devises and bequests in this codicil, and, of course, excepting out of such residue
12 Castle Point and the homestead lot and the houses thereon, I do give, devise, and bequeath (instead of the devise and bequest of the residue of my original will) unto my said wife and children, born and to be born; each of my sons to have two shares, my wife two shares, and each of my daughters one share thereof. And I do hereby empower my executors to pay the legacies given in my will and this codicil, by transferring personal property, stocks, bonds, and other securities, in which my money is or shall be invested, as well as any of my real estate now standing in my own name, or such as my executors shall receive from the Hoboken Land and Improvement Company; and, in the latter case of the transfer of real estate, I give full power to my said executors to pass the title, fee simple or otherwise, provided such property, personal or real, so transferred shall be equal in value to so much of or all of the legacy for which it shall be transferred and conveyed to such legatees; and this power shall extend to authorize such payment of the said sum of five hundred thousand dollars hereinbefore directed to be paid in money to the trustees of said institution of learning; all which payments in the manner herein authorized shall be in the discretion of my executors. And I do also authorize and empower my executors to sell all or any part of my real estate, except Castle Point and the homestead lot and houses thereon and the block on which the said institution of learning is to be built, and said school-house plots on Garden st'eet, in their discretion, for such consideration as they shall think fair and proper, and to make a good and complete title thereto in the same manner and as effectually as I could do if living, and this power shall extend to all such real estate as my said executors may purchase; and to lease all or any part of the same lands, with the exception aforesaid, at such rents and for such terms of years as they, in their discretion, shall think expedient, and the power to lease shall extend to said real estate to be purchased; and to change the investments of my moneys and property, such as are in my name now, or as they shall purchase, and reinvest the same as they shall deem expedient; the purchasers of real estate and lessees under the foregoing powers not to be responsible for the application of the consideration moneys re-
13 ceived by my said executors or rents. My desire is that, notwithstanding Mr. Shippen and Mr. Dodd are to be my executors, in conjunction with my wife, they shall act as officers and agents of the Hoboken Land and Improvement Company, and for their services as such receive from said company a just compensation, in addition to that which they may be entitled to, as executors, such compensation to be determined by the directors of the company. In witness whereof, I have hereunto set my hand and seal this fifteenth day of April, eighteen hundred and sixty-seven.

E. A. STEVENS. [L. S.]

Signed, sealed, published, and declared by the said Edwin A. Stevens, the testator, on this fifteenth day of April, in the year eighteen hundred and sixty-seven, to be his last will and testament in our actual sight, hearing, and presence, who, in his presence and at his request, and in the presence of each other, have hereunto subscribed our names as attesting witnesses to the due execution thereof, the day and year aforesaid. This will is written upon seventeen pages, counting in said number the original will; there are but six lines on the twelfth page. On the fifth page is an interlineation of the words "with productive property standing in my own name;" also in another place on that page of the words "and that last mentioned," the words "much of," written on the margin of said page; on the eighth page the word "directed" is erased; on the eleventh page the words "for said purposes" are interlined; on the thirteenth page the words "not exceeding five hundred thousand dollars" are interlined. The testator has signed every page of the original will, as well as every page of the codicil, in the margin of the page, including this, which makes eighteen pages instead of seventeen, as before stated, the attestation being included and counted as part of the will.

CAROLINE B. DODD,
Princeton, N. J.
ROBERT GILCHRIST,
Residing at 172 *Barrow St., Jersey City.*

14 And your orators further show unto your honor that the said testator, Edwin A. Stevens, departed this life on orabout the seventh day of August, in the year eighteen hundred and sixty-eight, being at the time of making his said will and codicil domiciled in, and a citizen of, the State of New Jersey, residing in Weehawken, and at the time of his death also domiciled in the said State, and continuing a citizen and resident thereof, but temporarily sojourning in the Empire of France; that the said Edwin A. Stevens never revoked or altered said will or codicil save as said will is revoked or altered by said codicil; and the said testator, Edwin A. Stevens, at his death left him surviving the said Martha B. Stevens, his widow, and the said John Stevens, Edwin Augustus Stevens, Robert L. Stevens, Julia Augusta Stevens, Caroline B. Stevens, Charles Albert Stevens, Richard Stevens, and Mary P. Garnett, his heirs at law.

And your oratrix, the said Martha, being one of the executors appointed by said will and codicil, in conjunction with William W. Shippen and Samuel B. Dodd, the other executors appointed by said will, did prove said will and codicil before the surrogate of the county of Hudson, in this State, which was the county of the residence of the said Edwin A. Stevens at the time of his death, and the said Martha B. Steven, William W. Shippen, and Samuel B. Dodd have taken upon themselves the execution of said will and codicil. And your orators further show unto your honor that your oratrix, the said Martha, and the said William W. Shippen and Samuel B. Dodd have possessed themselves of a part of the said testator's real and personal estate.

That the said testator possessed a large majority and as much as nine-tenths of the stock of the Hoboken Land and Improvement Company in said codicil mentioned, and the said executors substantially control the whole of the real estate belonging to that company, which is of large extent and of the value of millions of dollars, and also the whole of the personal estate of that company, and will continue to do so, notwithstanding all the purchases which the said codicil contem-

plates shall be made of said company by assigning to it the stock of said company, which is personal estate and vested in said executors.

15 And your oratrix, the said Martha, further shows that while she is an executrix of the said will and codicil and one of the trustees thereby appointed, and desirous of faithfully carrying out the will and codicil of the testator, she conceives it to be her duty to herself as executrix and as legatee and to the other legatees to ask the advice of this honorable court as to the validity and construction of the directions, devises, bequests, and trusts for charitable uses by the said codicil created, before joining with the other executors and trustees in carrying out the same; and the other complainants further show that they are advised by counsel, and humbly insist, that they are entitled to have a declaration of this honorable court as to the validity of the trusts, devises, bequests, and directions aforesaid, so that in case the same, or any of the same, are illegal the property of the testator should not be changed in its character or devoted to purposes not consistent with these interests.

And your orators further show that doubts have been expressed whether the said direction to the executors to purchase the said two school-house lots and the furniture and property of the Hoboken Land and Improvement Company on said lots or in said school-houses is valid, and the chief objection thereto is that the trusts upon which they are to be held are indefinite, and for that and other reasons void; that therefore the stock of said company that would, by obeying said direction, be used to purchase said school-house lots and property, ought to fall into the residue of the testator's estate, and pass to the residuary legatees, instead of being devoted to the purposes of said trust; and doubts have also been expressed whether the devise to your oratrix, the said Martha, and to William W. Shippen and Samuel B. Dodd, in fee of said block of land in said codicil described, and the bequest of said sum of one hundred and fifty thousand dollars wherewith to build an institution of learning thereon, and of the further sum not exceeding five hundred thousand dollars, are not illegal, as indefinite and for other reasons; and whether the direction to expend a sum not exceeding one million of dollars to finish the Stevens Battery in said codicil mentioned is not indefinite and void, and the direction to offer the

16 same to the State of New Jersey is not also illegal and void, inasmuch as it is alleged that the said Stevens Battery will be a vessel of war, and the State has no right, in the time of peace, to keep such a vessel, except with the consent of the Congress of the United States.

And your orators, other than the said Martha, claim that the said devises, bequests, directions, and trusts for charitable uses are illegal and void, and that they are entitled to the moneys and property thereby devised, bequeathed, or directed to be expended for said charitable uses; and your oratrix, the said Martha, will also claim a portion of the same as one of the residuary legatees, provided said devises, bequests, directions, and trusts are declared void.

And the said William W. Shippen and Samuel B. Dodd threaten, as executors, to pay out the moneys and devote the property in said codicil mentioned to the purposes in said codicil directed, notwithstanding the doubts that are expressed as to the validity of the devises, bequests, directions, and trusts for charitable uses, and as trustees to fully and literally carry out the expressed intention of the said testator.

And your orators further show that the State of New Jersey, which

is entitled to be represented by George M. Robeson, esquire, attorney-general thereof, and the said Mary P. Garnett, one of the heirs at law of the said testator and one of the said residuary legatees, are the only persons or corporations, besides the complainants and the said William W. Shippen and Samuel B. Dodd, who are interested in the property of the testator, or in any of the questions which arise upon said will and codicil.

To the end, therefore, that the said William W. Shippen and Samuel B. Dodd, in the character both of executors and trustees, and the said Mary P. Garnett, and the said George M. Robeson, attorney-general of the State of New Jersey, may answer this your orators' bill of complaint without oath, according to the late statute, and that the said will and codicil may be established, and that the directions and trusts thereof may be performed and the devises and bequests be carried into execution, so far as the same are legal, and no further, and that this honorable court may give a construction to the said devises, bequests, and directions and trusts,
17 and declare which, if any, of the same are illegal, and that in the mean time the said William W. Shippen and Samuel B. Dodd, as executors, be restrained by the injunction of this honorable court from executing any of the directions of said will which require the payment of money or the sale of any property of any kind of the testator, or the purchase of any real estate for the purpose of carrying out of said charitable uses and trusts, and that the said William W. Shippen and Samuel B. Dodd, as trustees, may also in the mean time be restrained from acting in the execution of said charitable trusts, and that your orators may have such further and other relief in the premises as the nature of the case may require and as shall be agreeable to equity and good conscience: May it please your honor to grant unto your orators not only the State's most gracious writ of injunction, issuing out of and under the seal of this honorable court, directed to the said William W. Shippen and Samuel B. Dodd, executors and trustees aforesaid, commanding them to refrain from the acts which your orators have hereinbefore prayed they may be restrained from doing, but also the State's most gracious writ of subpœna, issuing out of and under the seal of this honorable court, directed to George M. Robeson, esquire, attorney-general of the State of New Jersey, the said William W. Shippen and Samuel B. Dodd, executors and trustees as aforesaid, and to the said Mary P. Garnett, commanding them and each of them that on a certain day and under a certain penalty they be and appear in this honorable court, then and there to answer the premises and to stand to and abide such decree as shall be equitable and just and as to your honor shall seem meet. And your orators, as in duty bound, will ever pray, &c.

ALEX. T. McGILL,
Solicitor with the Complainants.
JOSEPH P. BRADLEY,
Of Counsel with Complainants.

18 In chancery of New Jersey.

BETWEEN THE ATTORNEY-GENERAL, INFORMANT.
and
MARTHA B. STEVENS ET AL., DEFENDANTS.

Information.—Filed July 21, 1873.

To the honorable Theodore Runyon, chancellor of the State of New Jersey:

Informing, showeth unto your honor, Robert Gilchrist, attorney-general of said State, on behalf of the same, as follows:

1. Edwin A. Stevens, now deceased, who died on the seventeenth day of August, in the year eighteen hundred and sixty-eight, in his lifetime, and at the time of his death, was in possession of, and had since some time in the year eighteen hundred and fifty-six been in possession of, an incomplete vessel, or the hull, machinery, and other parts of a vessel generally known as the Stevens Battery, and of materials intended to form a part thereof; all, or almost all, located and being, and having been for many years prior to his death, at Hoboken, in the State of New Jersey; and at the date of the codicil to his will (which is hereinafter stated), and for above four years prior thereto, and up to and at the time of his death, he claimed to be the exclusive owner thereof.

19

2. Being so in possession of said battery and materials, and so claiming, and also of a large real and personal estate, then valued at from five to ten millions of dollars, the said Edwin A. Stevens having made a last will and testament, bearing date the fifth day of August, in the year eighteen hundred and sixty-five, did, on the fifteenth day of April, in the year eighteen hundred and sixty-seven, by a codicil thereto, bearing date the day and year last aforesaid, attested by two witnesses, and in due form of law to pass real estate, among other things, order and direct his executors as follows:

"Out of the residue of my estate (including Castle Point and the homestead lot and the house thereon) remaining after the payment of my debts, the said eight hundred thousand dollars in legacies, and the appropriation of so much thereof as is necessary to answer the foregoing charitable bequests and devises, I empower my executors to apply, not exceeding the sum of one million dollars, to finishing, on my general plans as near as may be, in the discretion of my said executors, the battery known as the Stevens Battery; and for the accomplishment of the said object, I give to them the use of the dock and yards and basin heretofore appropriated to the said battery, and all the material provided for said battery; when said battery shall be finished, I direct my executors to offer the same to the State of New Jersey as a present, to be disposed of as the said State shall deem proper; and if not accepted by the said State, I direct my executors to sell the same, and the proceeds thereof shall fall into the residue of my estate."

3. A copy of said will and codicil are hereto annexed, in a schedule marked A.

4. Martha B. Stevens, the widow of the testator, William W. Shippen, and Samuel B. Dod were, by said codicil, appointed his executors. They proved the said will and codicil in the year eighteen hundred and sixty-eight, before the surrogate of the county of Hudson, in this State, and took upon themselves the burthen of the ad-

20

ministration thereof. The testator's domicil, at the time of his death, was Hoboken, in said county.

5. In the month of October, in the year eighteen hundred and sixty-eight, about two months after the death of Mr. Stevens, the executors retained General McClellan to advise them as to the method of finishing said battery.

On the twenty-first day of December, eighteen hundred and sixty-eight, Martha B. Stevens, as such executrix, and in her own right as legatee of the residuary estate, and the then living children of her, the said Martha, by the said Edwin A. Stevens, by their next friends, filed their bill in this court, stating, among other things, that doubts had been expressed whether the direction to expend a sum not exceeding one million of dollars to finish the Stevens Battery was not indefinite and void; and also void as contrary to the prohibition of the United States Constitution, that a State shall not, in time of peace, keep such a vessel, except with the consent of congress; and that Dod and Shippen, the other executors, notwithstanding such doubts, intended to carry out the will; and also stating that the State was entitled to be represented by the attorney-general, and that the State and Mary P. Garnett and the executors, Dod and Shippen, were the only persons or corporations, besides the complainants, interested in the testator's property, or in any question arising on the codicil, and praying that the will and codicil might be established, the directions and trusts performed, and the devises and bequests be carried into execution, so far as legal, and for a construction of the devises, bequests, and directions, and a declaration which, if any, were illegal; and that Dod and Shippen might be restrained from executing any of the directions of the will which required the payment of money; and other and further relief and process against the said Mary P. Garnett and the attorney-general and the said Dod and Shippen. To which bill the defendants made answer, and filed the same, on the twenty-third day of December, A. D. eighteen hundred and sixty-eight, admitting
21 the allegations of fact in the bill; but the said attorney-general, Dod and Shippen insisted upon the legality of all the devises, bequests, directions, and trusts, and the said Mary P. Garnet denied the legality of any except those for the benefit of the widow and children.

Pending the said bill and answers, and in or prior to the month of February, in the year eighteen hundred and sixty-nine, and before the filing of a replication in said suit, all of the executors employed General McClellan as an adviser, and about the same time or afterwards employed him and John Newton, for what purpose the attorney-general is not aware, and prays a discovery thereof, and of all the correspondence between said McClellan and Newton, or either of them, and said executors, or either of them, relating in any way to the said battery, from the month of October, in the year eighteen hundred and sixty-eight, to the first day of January, A. D. eighteen hundred and seventy-two; but the attorney-general informs your honor that the said McClellan and Newton, in the said month of February, in the year eighteen hundred and sixty-nine, gave to Dod and Shippen, two of the executors, a statement in writing of their views in regard to the completion of said vessel, and a provisional estimate of the cost of completing said vessel, which amounted to just one million dollars, and stated therein that it must be understood that while it was possible to estimate with sufficient accuracy the cost of entirely new work it was out of the question to make a similarly accurate estimate of the

cost of the additions required to be made to the existing hull of the vessel. Whether the other executor was informed of the contents of the said communication or not at the same time, and when, the attorney-general is ignorant, and prays a discovery thereof.

The vessel, as it stood then, consisted of the hull, nearly complete, containing engines and boilers, nearly complete.

She was originally intended for harbor defence, especially that of New York; but the plan proposed for finishing her, about or prior to the year eighteen hundred and fifty-six, would make her a vessel not adapted to the defence of the harbor of New York. The said McClellan and Newton suggested great modifications in the building of said
22 vessel, which they, in said communication, stated would make her the most powerful iron-clad in the world—her speed exceed that of any then existing iron-clads—her handling easy—her capacity for coal unusually large—her quarters for officers and crew convenient and comfortable—her protection stronger than any known iron-clad, and her armament more powerful, and said plan was either entirely or in so far as the work thereof ever progressed approved by Dod and Shippen, two of the executors; but the attorney-general is ignorant whether it was approved by Mrs. Stevens, and prays a discovery thereof; and as to how much was approved by each, or any, or all of the executors.

Immediately after the said estimate of McClellan and Newton (of February, eighteen hundred and sixty-nine), the task of preparing the ship for new work, completing the detailed plans, erecting the necessary shops and scaffolds, and procuring materials, tools, &c., commenced.

7. On the fifteenth day of March, in the year eighteen hundred and sixty-nine, the said other executors wrote a letter to the governor of New Jersey, stating, among other things, that they were going on to complete the said battery, and suggesting the appointment of commissioners by the State to inform them of the probable disposition of the ship, and as to the details of her completion.

At the date (March fifteenth, eighteen hundred and sixty-nine), of said letter of the three executors to the governor, all of the said executors had already joined in expending, and had expended above twenty-two thousand dollars for some purpose connected with said battery, but for what special purpose, the Attorney-General is ignorant, and prays a discovery thereof, and how much thereof was expended to keep the vessel from injury, and how much to finish and complete her, or for what other purpose.

On the first day of April, in the year eighteen hundred and sixty-nine, by resolution of the legislature, approved by the governor, the State of New Jersey declared, among other things, that it would accept the vessel when finished and offered and empowered the governor to appoint commissioners, and declared that the commis-
23 sioners should have power to determine, by a majority vote (of which the governor should be one) to what use the said vessel should be devoted, to advise as to the details of the completion, and to negotiate for the final disposition of the vessel when finished and delivered.

Some time in the year eighteen hundred and sixty-nine, Fitz-John Porter, William W. Shippen, and Benjamin Clark were appointed commissioners by the governor.

8. On the twenty-first day of April, in the year eighteen hundred and sixty-nine, the complainants in said suit filed a replication therein.

In the meantime the work of finishing said battery, and the expenditure of money to the amount of many thousands of dollars thereon, continued by all or some of the executors, with the consent of all the executors, so that, by or about the time that Martha B. Stevens left for Europe, in November, eighteen hundred and sixty-nine, there had been expended about one hundred and fifty thousand dollars.

The engines were then in hand, and the more difficult portion well advanced; the raising of the sides was substantially completed, the deck-beam, shelves, gussets, &c., as well as the armor-shelf and its supports well advanced towards completion; the inner lining commenced at the bow and stern; three bulk-heads set up, and others in hand; the stern-plates, &c., fitted and partially riveted; the bow well advanced towards completion; several deck-beams in place; and a considerable amount of vertical armor-backing fitted.

But up to the fifteenth day of December, in the year eighteen hundred and sixty-nine, the said commissioners appointed by the governor had not seriously considered what disposition it might be advisable to recommend that the State should make of the ship upon her completion. In the month of January, in the year eighteen hundred and seventy, the said executors spent sixty-three thousand dollars upon said vessel; in the month of February, eighteen hundred and seventy, seven thousand dollars; in the month of March, eighteen hundred and seventy, seventy-five thousand dollars; in the month of April, eighteen hundred and seventy, the sum of fifty thousand dollars; in the month of June, eighteen
24 hundred and seventy, the sum of fifty thousand dollars; in the month of July, eighteen hundred and seventy, fifty thousand dollars; in the month of August, eighteen hundred and seventy, fifty thousand dollars; in the month of September, eighteen hundred and seventy, the sum of fifty thousand dollars; in the month of October the sum of fifty-two thousand dollars; in the month of November, the sum of fifty thousand dollars.

And it appears also that said executors spent the further sum of about one hundred and sixty or seventy thousand dollars—some part thereof, perhaps, arising from the sale of old material of the battery—of the amount of the total expenditure, out of the sum of one million mentioned in Mr. Stevens' will.

9. The attorney-general is ignorant, and prays a full discovery thereof, and of the purposes for which expenditure was made, and the amount of material that was sold and added to the sum of one million. And the attorney-general is ignorant whether anything or what was done towards the determination by a majority vote of the commissioners appointed by the governor and the governor (of which majority the governor was to be one) to what use the said vessel should be devoted, and if such determination was made, whether the said executors were informed thereof, or whether they advised with the executors as to the details of the completion of said vessel, and he therefore prays for a full discovery of the acts of the said commissioners and the governor for the time then being, in respect of such matters, inasmuch as the report of said commissioners to the legislature of eighteen hundred and seventy does not furnish satisfactory information thereof.

10. In the month of November, in the year eighteen hundred and seventy, and from time to time since, the said Shippen and Dod, two of the executors, alleged that they were unable to finish the said vessel as directed by the testator without the expenditure of about four hundred thousand dollars more than the million devoted thereto by the testator, and have spent but little money upon said vessel since.

In the month of April, in the year eighteen hundred and seventy-one, by an agreement in writing between the said commissioners, on the part of New Jersey, and Dod and Shippen, two of said executors, and Schuyler, Hartley, and Graham, the said Dod and Shippen assented to said legacy to said State, and the said two executors and said Martha, before then, and then and since, in many ways, have repeatedly assented to the said legacy to the said State of said vessel.

The said Edwin A. Stevens devised and bequeathed by said codicil to said will the residue of his estate unto his wife and children born and to be born. The said Martha B. Stevens was his wife, and is now his widow. His children living at the date of his codicil were Mary P. Garnett, who has since married Edward P. C. Lewis, and John Stevens, Edwin A. Stevens, Robert L. Stevens, Caroline B. Stevens, Julia Augusta Stevens, and Charles Albert Stevens, and there was born unto him thereafter Richard Stevens, all of whom are now living except the said Julia Augusta Stevens, who died an infant of the age of nine years, on the twenty-fourth day of December, eighteen hundred and seventy, and under her, and as her next of kin, the other children and her mother claim some interest in said battery and said sum of one million of dollars, and said widow and children also claim an interest therein as residuary legatees and otherwise.

11. The said Martha B. Stevens, one of said executors, shortly after her return from Europe (where she had been from November, eighteen hundred and sixty-nine, to July, eighteen hundred and seventy-one), and her children, filed in this court, on the eleventh day of September, in the year eighteen hundred and seventy-one, a bill supplemental to her and her children's original bill, setting forth a great variety of matters connected with the estate of which she was an executrix, and disclosing, for the first time, that the said Martha B. Stevens, one of said executors, objected to offering the said vessel to the State, for the alleged reason that the said executors had not finished the same, and could not finish the same with the expenditure of the million directed to be expended by the testator; although said executrix also alleged that she and they, or they, had, by the expenditure of nearly nine hundred thousand dollars of said fund of one million, finished the
26 same as near as it was possible to do with that expenditure, and she and her co-complainants (her surviving children) therein insisted upon the legal proposition that the said clause hereinbefore recited, extracted from the will of said Edwin A. Stevens, deceased, must necessarily be construed to make the legacy of the vessel contingent upon the vessel's being finished at a cost of a million of dollars or less, and the co-executors of the said Martha now take the same position, or express grave doubts whether said construction is not the true one; but the attorney-general alleges that by the first sentence of the said extract from said will the fund of one million dollars is set apart by the testator, to be used in completing a chattel, which is directed to be given, as a chattel, to the State as a legatee.

The direction to the executors to offer the said vessel to the State (and if not accepted to dispose of it by sale themselves) is a gift to the State; that such is dependent upon no other condition than that implied in every gift, that it shall not, as it cannot, take effect if not accepted.

12. And the attorney-general insists that the legacy of the vessel, which is wholly contained in the direction to offer it to the State, is not made to depend upon any event whatever by virtue of the words which

introduce the direction to offer the same to the State, "when sa id battery shall be finished, I direct," &c.; for the attorney-general alleges that the thing when bequeathed, was as yet incomplete; and in view of that fact, the words "when finished," were descriptive of the state and condition in which the testator intended the legatee should be entitled to the then incomplete vessel, and were apt and appropriate to perform the office of describing the thing bequeathed, and will be satisfied without construeing them to import any contingency whatever.

13. The attorney-general insists that if the word "when" would otherwise import a contingency, it will not under the circumstances of this case; for the attorney-general alleges the event on which the legacy is asserted to depend, was not one either in the control of the legatee, nor in any wise descriptive of the legatee, nor the whole motive of the bequest.

27 14. The attorney-general insists that if the whole motive of the direction to spend money upon the battery was to finish it, the motive of the bequest to the State was not, in whole, or even in part, to finish it; but the motive of the bequest to the State was that the State might reap the pecuniary gain to be derived from a sale or any other disposition thereof, from which the State might derive an advantage valuable in its nature.

15. The attorney-general insists that if the said word "when" imports a contingency and creates a condition precedent, and the non-happening thereof might, if the condition were possible, defeat a devise of realty or bequest of personalty, or, if the condition were impossible, defeat a devise of realty, it will not do so in this case, even if the condition was or has become impossible (as is alleged by the executrix), for the attorney-general alleges that said gift is of personal property; in which case the impossible condition is null, and not the bequest; especially if, as before alleged, it was not the whole motive of the bequest to the State, to finish the vessel.

16. And the attorney-general alleges the fact to be that the thing bequeathed—the incomplete vessel—was required by the testator to be, and continue, in the charge, care, and management of the executors in the mean time, until delivered to the State, and money to be left in their care until then; so that the executors might execute their trust, and they were to continue trustees of the vessel and fund (to be used to finish it) until the vessel was to be delivered to the State; and the fund was necessarily and constantly employed for the benefit of the legatee, in the mean time.

And the attorney-general insists that, under these circumstances, and by force of these directions of the testator, the right of the State to have the trust and condition (if any condition) performed by the executors, was a vested right; and the legacy a vested one—and the estate and interest of the executors a mere exception (out of the estate and interest of the legatee) created for the legatee's benefit; and that there is no express disposition of the fund or vessel, in case the

28 vessel is not finished, but only in case the State refuses to accept after the vessel has been offered to it.

17. And the attorney-general alleges that the postponement of the offer to the State was from the necessity of the case—the nature of the subject-matter, and for the improvement of it; and he insists that it was not to suspend the vesting of the title of the legatee to the vessel as it was, or to suspend the legatee's right to the application of the million to make the vessel more valuable, but to the intent merely that the bequest might consist not only of the battery as it was, but of the

battery "when" (*i. e.*, in the state and condition it would be when "finished") improved and increased in value to the extent of the expenditure directed by the testator.

18. And the attorney-general alleges that the condition (if any) is the doing of an act by the executors which the testator directs to be done by them; and if the executors have failed to perform it, by neglect or perversity, or because it was impossible; and no duty was (as the attorney-general alleges there was not) imposed upon the legatee by the will, but the legatee was to be allowed to be passive, as the attorney-general alleges it was, the non-performance of such condition will not, he insists, defeat the legacy.

19. And the attorney-general further says that he is ignorant whether, in truth and in fact, the said vessel can or cannot now, or could or could not, when the said executors qualified, or afterwards or before, be finished, on the testator's general plans as near as might be, for the sum of one million dollars, and such parts of the proceeds of the old material as might not be useful in finishing the same; and the attorney-general prays a discovery thereof, and what were the general plans of the testator, and how near thereto said vessel can be, or could have been finished thereon for said fund and said proceeds; and, if it cannot, or could not have been, why not, and how far the executors conformed to said general plans, and how far they departed therefrom, and whether said vessel could not have been finished as a war vessel for har-
29 bor defence, for said fund and said proceeds, and be substantially as good for harbor defence as she would be now if she were finished on the plans adopted, and why they adopted the plan that was adopted on the provisional estimate of McClellan and Newton of one million dollars; the paper, of which said provisional estimate was a part, declared that while it was possible to estimate with sufficient accuracy the cost of entirely new work, it was out of the question to make a similarly accurate estimate of the cost of the additions required to be made to the existing hull, and how much the cost of entirely new work (if there was any) and if such additions exceeded the provisional estimate, specifying each portion particularly and especially, so far as practicable, and the excess in each case.

20. And the attorney-general insists that, under the circumstances herein stated, as well as those stated by said executors, they are bound to finish the said vessel, notwithstanding it may cost exceeding the sum of one million dollars and the proceeds of old material, either out of the moneys belonging to the estate of said Edwin A. Stevens, deceased, or out of their own moneys.

21. And the attorney-general further informs your honor that the building of said battery was originally commenced by Robert L. Stevens, now deceased, some time about the year eighteen hundred and forty-two, under a contract with the Government of the United States, and that the said Robert L. Stevens spent thereon money of the United States about half a million dollars, and of his own money about one hundred and thirteen thousand five hundred and seventy-nine dollars.

22. Robert L. Stevens died in the year eighteen hundred and fifty-six, having first made his last will and testament in due form of law, attested by two witnesses, and thereby, after sundry bequests, not including the said battery, or any interest therein, or said money expended thereon, devised and bequeathed the whole residue of his estate to the said Edwin A. Stevens, deceased, as his residuary legatee.

30 23. Edwin A. Stevens in his lifetime, and from time to time

after the death of Robert L. Stevens, expended upon the said battery, up to the fifth day of September, in the year eighteen hundred and fifty-seven, the sum of eighty-nine thousand one hundred and eighty-five dollars and twenty-seven cents, but how much he expended directly towards completing said vessel, towards perfecting the plans therefor, or in experimenting, or otherwise, the attorney-general is ignorant, and prays a discovery thereof; but he insists that, whether said Edwin A. Stevens expended said sum as executor of his brother, Robert L., or otherwise, is immaterial, as he was residuary legatee, and expended nothing but the residue of said estate of his brother Robert, which was in fact his own money.

24. The United States, by resolution of Congress, approved by the President on the seventeenth day of July, in the year eighteen hundred and sixty-two, resolved as follows:

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That all the right, title, and interest of the United States in and to the Stevens Battery be, and the same are hereby, released and conveyed to the heirs at law of said Robert L. Stevens, or their legal representatives."

And the attorney-general insists that either the said resolution is void for uncertainty as to the grantee; and then a subsequent resolution of the Congress of the United States, approved by the President on the first day of July, in the year eighteen hundred and seventy, as follows:

"Whereas Edwin A. Stevens, who was in his lifetime the owner of the ship known as the Stevens Battery, originally commenced under contract for the United States Government, and upon the building of which large sums of money were spent by his brother and himself, did by his last will and testament (the United States having previously relinquished all claims to said ship) leave the same to be finished by the executors, at an expense not exceeding the sum of one million of dollars, and when finished to be offered to the State of New Jersey as a present; and whereas doubts have been suggested as to the right
31 of the said State to accept the said bequest without the consent of Congress, under the prohibition of the tenth section of the first article of the Constitution of the United States: Therefore,

"Resolved by the Senate and House of Representatives of the United States of America, in Congress assembled, That the consent of Congress is hereby given that the State of New Jersey shall receive and dispose of the said ship according to the terms and conditions of said bequest"—

Is a gift of the said battery to the State of New Jersey by the United States; or, if the said resolution of the year eighteen hundred and sixty-two is not void for uncertainty, the same is a gift of said battery by the United States to Edwin A. Stevens, he then being in fact, in a popular sense, the heir of the said Robert L. Stevens, by reason of being residuary legatee, and certainly legatee of said battery; and at all events, as such legatee, became entitled to the said battery under the words "heirs of Robert L. Stevens or their legal representatives," being, in the sense of said resolution, the legal representative of the said heirs. That in the sense of said resolution the said Robert (having devised all his property) had no other heir than his legatees and devisees; and the only legatee or devisee of said Robert L., so far forth as said battery is concerned, was said Edwin A. Stevens, deceased; that the said battery being personalty, the word heirs is not to have a technical but a popular sense attached to it.

25. And the attorney-general informs your honor that said Edwin

A. Stevens, was one of the heirs at law of Robert L. Stevens, and also of his next kin, and if said Robert L. Stevens had died intestate would have been entitled, as his heir at law, to one-seventh part of all his estate and if said resolution of Congress of the year eighteen hundred and sixty-two is not void, and does not give the said battery to the said Edwin A. Stevens, and the resolution of eighteen hundred and seventy does not give the same to New Jersey, then the said Edwin A. Stevens, was, at all events, entitled to one-sixth part as one of Robert's heirs, and as heir, or next of kin, to deceased heirs of Robert, of the interest of the United States had in said battery in the year eight-
32 een hundred and sixty-two, and the whole of the interest therein, and the value thereof represented by his brother's and his own expenditure, as executor of Robert L. Stevens or otherwise, upon the said battery.

26. But the attorney-general informs your honor that the heirs at law of Robert L. Stevens, in a technical sense, to wit, James A. Stevens, his brother, Sophia L. V. C. Stevens, his sister, Julianna Conover, his sister, John C. Stevens, his brother, who died after his brother Robert, and in the year eighteen hundred and fifty-seven (without issue or widow), Mary Sands, Matilda, wife of John G. Brown, Ann, wife of Robert L. Clarkson, Harriet, wife of George W. Wetmore, Joshua Sands, John Sands, and Samuel Sands, the latter seven Sands all children of Harriet, the sister of Robert L. Stevens, deceased, have all, from the time of the passage of said resolution, acquiesced in that construction of said resolution of the year eighteen hundred and sixty-two which will vest, and did vest, the title of the United States to said battery in the said Edwin A. Stevens, deceased, have stood by with full knowledge or information of said resolution, and with the same, or as much knowledge and information thereof as said Edwin and his executors, or as much opportunity to get the same knowledge and information as said Edwin or his executors, and with knowledge and information of the fact that said Edwin A. Stevens believed said battery to have become his by virtue of said resolution of the year eighteen hundred and sixty-two, and of the will of his brother Robert, and permitted the said Edwin A. Stevens, deceased, in his lifetime, to spend his own money thereon, to the amount of hundreds of thousands of dollars, without claiming the said battery, or any interest therein; and that it is immaterial whether any part of such expenditures was with the money of said Robert L. Stevens, as he, the said Edwin A. Stevens, deceased, owned, as residuary legatee, the whole of such money so expended (if any); as executor of his brother Robert and the said heirs at law (in a technical sense) also stood by with full knowledge and information, and opportunity of knowledge and information of the said resolution of the year eighteen hundred and sixty-two, and of the fact that
33 said Edwin A. Stevens believed, and his executors believed, and that the State of New Jersey believed that the said battery belonged to the said Edwin A. Stevens in his lifetime by virtue of said resolution of the year eighteen hundred and sixty-two, and the will of his brother Robert, and that after his death it belonged to his executors in trust, for the State of New Jersey, and with such knowledge and information, and opportunity of knowledge and information, and permitted the said executors of Edwin A. Stevens to spend about nine hundred thousand dollars thereon, with intent to finish the same, and offer the same to the said State without giving the said Edwin A. Stevens, deceased, or his executors, or the said State any notice of any claims to said battery; and the attorney-general alleges that if the

heirs at law (in a technical sense) had given any intimation whatever of their claim to Edwin A. Stevens, deceased, in his lifetime, or to his executors since, none of said vast sums would have been expended by said Edwin, deceased, or his said executors, and the whole object and motive of such expenditure will be thwarted if said claims of said heirs, in a technical sense, can now prevail against the equitable title by reason of such acquiescence now vested in the State of New Jersey; and said executors, of said Edwin A. Stevens, deceased and the attorney-general prays a discovery as to who were the heirs at law of Robert L. Stevens, deceased, in the year eighteen hundred and sixty-two, and who are the persons who claim any interest under said resolution, of said year last stated as such heirs, or under such heirs, and what information or knowledge, or opportunity to procure knowledge or information, of the title to said battery any of said defendants had, or if said resolutions of eighteen hundred and sixty-two, or of the expenditures that were made on said battery, at the time they were made, and if the circumstances under which they were made, and if they had not the knowledge or information charged, what other knowledge or information they, or any of them, and which, had, and whether they, or any of them, did not believe that said Edwin A. Stevens owned said battery at the time of his death, or at any other time, and his executors after him. And the attorney-general alleges that the said battery, as it is now, is not worth exceeding the amount expended, under the
34 circumstances aforesaid, by said Robert L. Stevens, Edwin A. Stevens, both deceased, and their respective executors, or even the amount expended by *by* said executors of said Edwin A. Stevens, deceased; and the attorney-general therefore insists that said heirs at law (in a technical sense) are thereby and otherwise barred in equity from making, at this time, any claim to said battery, or any part thereof.

27. And the attorney-general also insists that if said heirs at law (in a technical sense) ever had any title or claim to said battery, and are not barred, in manner aforesaid, from claiming said battery, or any part thereof, they have no equitable title whatever to any portion of the moneys expended by said Edwin A. Stevens, deceased, or his executors, but only to such portion of the value of said vessel as the proportion the amount of the money furnished by the United States bear to the amount expended by said Robert L. Stevens, deceased, and his executor, and Edwin A. Stevens, deceased, and his executors.

28. The said suit has progressed so far that Dod and Shippen have been sworn as witnesses, but the attorney-general cannot safely proceed to offer evidence in said suit till it is known what are the questions of fact therein, except by the expenditure of large amounts of money to procure experts to testify on matters which may be entirely immaterial; but the attorney-general insists that in the said suit, and on the allegations therein contained, none of the rights of the parties litigant can be settled, and this court neither has the jurisdiction, nor will exercise the power to settle any of the questions raised by this information.

And the said State of New Jersey has frequently requested the said executors of said Edwin A. Stevens, deceased, to finish the said battery; to expend all the moneys directed by the said testator, Edwin A. Stevens, to be expended to finish the same, and to offer the same to the State, but the said executors have on various pretences, refused to do so.

The attorney-general therefore prays that the said executors of Edwin A. Stevens, deceased, be required by decree of this court—

35 (*a.*) To offer said vessel to the State in such condition and at such a stage of completion as this court shall, under the circumstances, think equitable and just.

(*b.*) To finish the same out of the moneys appropriated for the purpose by the said Edwin A. Stevens, deceased, in and by his said will, or any other moneys of said estate.

(*c.*) If these moneys will not finish the same, that the said executors be required to finish the same out of their own moneys.

(*d.*) That this court will declare that the said bequest of said battery was not upon any contingency whatever.

(*e.*) And especially, not upon the contingency that the said vessel should be actually finished (with a less sum of money than it could possibly be finished for) before said executors should offer the same to the State; that is to say, that the court will declare that such bequest was not on an impossible condition.

(*f.*) That the words "when said battery shall be finished, I direct my executors to offer the same to the State," are not words importing a condition precedent to any right of the State.

(*g.*) That said words are merely descriptive of the subject-matter of the bequest, and of the state and condition in which the said State should have the right to require said vessel to be put by said executors, by means of said fund, one million dollars, before the State should be obliged to take any risk or burden, connected with the preservation or finishing thereof.

(*h.*) That the said resolution of eighteen hundred and sixty-two was a gift to Edwin A. Stevens of the said battery.

(*i.*) And if not, that the gift by the United States to the heirs of Robert L. Stevens, or their legal representatives, by the resolution of the year eighteen hundred and sixty-two, is void for uncertainty.

(*j.*) And in that case, that the resolution of eighteen hundred and seventy, is a gift of said battery to the State of New Jersey.

(*k.*) That the heirs at law of Robert L. Stevens—that is to say, the persons who are meant when the word heirs is used in a technical sense, be declared never to have had any right to said batttery.

(*l.*) And if they had that, they are barred, by reason of the
36 facts herein set forth, from all claims to said battery, and from all right and interest in said battery.

(*m.*) That the suit brought by Martha B. Stevens and her children may be declared to be of such a nature as to prevent the court from settling the rights of any of the parties.

(*n.*) That it may be stayed until the hearing in this suit, or at least till all of the parties thereto and to this information shall have answered the same, or the rights of the State are declared on a hearing of this cause on demurrer or otherwise.

(*o.*) And that the attorney-general, in behalf of the State, may have such other and further relief as the nature of the case may require, and especially that all of the defendants may answer this information under oath, making discovery of all matters hereinbefore prayed to be discovered, and of all such other matters as are pertinent to the facts herein alleged.

And that your honor will cause to be issued out of this honorable court an injunction directed to the said Martha B. Stevens and the other defendants who are parties to said suit, enjoining and commanding them to stay the further prosecution thereof until the rights of the State to said battery shall be determined in this suit, or enjoining and commanding them as to your honor, under the circumstances, shall

seem meet; and also to be issued out of this court a writ of subpœna to be directed to Martha B. Stevens as executrix of Edwin A. Stevens, deceased, and in her own right as legatee under his will, John Stevens, Edwin A. Stevens, Robert L. Stevens, Caroline B. Stevens, Charles Albert Stevens, Richard Stevens, William W. Shippen, and Samuel B. Dod, as executors as aforesaid, and in their own right, James A. Stevens, Sophia L. V. C. Stevens, Esther B. Stevens, Juljana Conover, Harriet Sands, Mary Sands, Matilda, wife of John G. Brown, and the said John G. Brown, Ann, wife of Robert L. Clarkson, and the said Robert L. Clarkson, Harriet, wife of George W. Wetmore, and the said George W. Wetmore, Joshua Sands, John Sands, and Samuel Sands, and the commissioners of said State, to wit, Fitz-John Porter, William W. Shippen, Benjamin F. Clark, Theodore F. Randolph, heretofore ex officio such commissioner as former governor of this State, and Joel Parker, governor of said State, Edward P. C. Davis, and Mary
37 P., his wife, commanding them, on a certain day, and under a penalty, to be and appear before this honorable court, then and there to answer the premises, and to abide and perform such order or decree in the premises as to your honor shall seem meet and shall be agreeable to equity and good conscience.

And the attorney-general aforesaid, as in duty bound, will ever pray, &c.

ROBERT GILCHRIST,
Attorney-General.

[Here follow Edwin A. Stevens' will & codicil, as hereinbefore, on p'g 2 et seq., set out.]

Answer of commissioners.—Filed January 5, 1873.

The joint and several answers of Theodore F. Randolph, Fitz-John Porter, and Benjamin G. Clarke, three of the defendants, to the information of Robert Gilchrist, attorney-general of said State.

These defendants, for answer to said information, say they admit that the said Theodore F. Randolph was governor of said State at the time of the passage of the joint resolution of the legislature of New Jersey, approved April first, eighteen hundred and sixty-nine, in said information set forth, and so continued till the month of January, in the year eighteen hundred and seventy-two; and the other defendants were duly appointed commissioners, as provided for by said resolution. They further say that at their first meeting, held at Hoboken soon after their appointment, there being present the executors, Messrs. Shippen and Dod, the constructors, Messrs. McClellan and Newton, and these defendants, it was concluded by these defendants that under provision of the will of Mr. E. A. Stevens, bequeathing the vessel to the State, but one use could be had in view, of the vessel thus bequeathed, so long as it remained incomplete and not actually in possession of the State of New Jersey, and that use a "battery" for war purposes.

Practically, therefore, they possessed no power under the resolution making their appointment, as to what use the vessel should be devoted, and never attempted to exercise any.

39 The defendants did not advise as to the details of the completion of the vessel, the executors having already placed the construction of the vessel in the hands of persons satisfactory to them at the time your defendants were appointed.

The only negotiation ever entered into by these defendants for the sale of the vessel was that attempted with Messrs. Schuyler, Hartley, and Graham; it proved to be a fruitless negotiation.

In general terms, these defendants beg leave to state that looking to the interests of the State in the matter of the battery they caused a bill to be prepared and passed by the Congress of the United States authorizing the State of New Jersey to hold (or dispose of) the Stevens battery, thus, in their opinion, putting aside an important constitutional objection to the bequest of Mr. Stevens.

They urged the proper Federal authorities to send competent persons to examine the vessel, from time to time, with a view to its becoming the property of the United States upon completion and purchase.

Finally, these defendants beg leave to state that though they have the fullest confidence in the administration of the financial affairs of the battery as conducted by the executors and constructors, they have never had an opportunity of knowing the precise amount of the expenditures upon the vessel, no bills or accounts having been submitted to them for approval or disapproval; no moneys never having come into or passed out of their possession; and, in a word, the executors having, at all times, acted as if the responsibility of all money matters rested with them alone, until the battery should be "finished and offered to the State;" and, as under the will of Mr. Stevens, the furnishing of the vessel, and the expenditure of "a sum not exceeding one million dollars," was left "to the discretion of the executors alone."

ALEX. T. McGILL.
Solicitor for and of Counsel with above-named Defendants.

NEW JERSEY, *to wit:*

Theodore F. Randolph, Fitz-John Porter, and Benjamin G. Clarke, being duly sworn according to law, each for himself on his oath saith that the facts, matters, and things in the foregoing answer set forth, so far as they relate to his acts and deeds are true, of his own knowledge, and so far as they relate to the acts of others he believes them to be true.

THEO. F. RANDOLPH.
FITZ-JOHN PORTER.
BENJ. G. CLARKE.

Sworn to and subscribed before me, at Morristown, this 2d day of January, A. D. 1874.

AUGST. W. CUTLER, *M. C.*

Answer.—Filed April 25, 1874.

The answer of William W. Shippen and Samuel B. Dod, two of the executors of the last will and testament of Edwin A. Stevens, deceased, to the information of Robert Gilchrist, attorney-general of the State of New Jersey:

These defendants now, and at all times hereafter, saving and reserving to themselves all manner of benefit and advantage of exception to the many errors and insufficiencies in the said information contained, for answer thereto, or unto so much and such parts thereof as they are advised are material for them to make answer unto, they answer and say:

1. As to the first paragraph of said information, that they admit the statements thereof to be true.

2. As to the second paragraph they say that they admit the statements therein contained to be true.

3. They also admit that the statement contained in the third paragraph is true.

41 4. Likewise these defendants admit the statements in the fourth paragraph of said information to be true.

5. These defendants admit all of the allegations and statements contained in the fifth paragraph of said information, except as hereinafter qualified, namely, except the allegation that the attorney-general did not or does not know, or was not or is not aware, for what purpose the said executors, including these defendants, employed General McClellan and Isaac Newton, which allegation these defendants deny, and they say that the purpose and reasons for which they employed said McClellan and Newton are, and before said information was filed were, truly and fully stated in the pleadings and evidence in the cause mentioned in the said fifth paragraph, and were and are well known to the said attorney-general. And as to the correspondence between said McClellan and Newton, or either of them, and said executors, or either of them, relating in any way to the said battery, from the month of October, eighteen hundred and sixty-eight, to the first of January, eighteen hundred and seventy-two, these defendants say that they know of no such correspondence which is in anywise pertinent or material to any matter involved in the said cause, or in the said information, beyond that which had been before the filing of said information produced and exhibited in said cause.

And as to the statement in writing made to these defendants by said McClellan and Newton, as to their views as to finishing said battery and the cost thereof, the statements of said fifth paragraph of said information are not accurate, but these defendants say that said statement, made by McClellan and Newton, before the filing of said information, was exhibited and offered in evidence in said cause, and marked Exhibit C 13, and a copy thereof was marked Exhibit C 10, and these defendants pray leave to refer the said attorney-general and the court to said statement, and to have leave to refer to it themselves whenever occasion may require, in order to ascertain fully and precisely what the contents of said statement are.

6. As to the statements contained in the sixth paragraph of the said information, these defendants admit them to be true, except the

42 allegation that the attorney-general is ignorant whether the plan pursued for finishing said battery was approved by Mrs. Stevens, but they say that the fact is that, before the said information was filed, the said attorney-general had been and was informed by the pleadings and evidence in the cause mentioned in said information that the said plan was approved by Mrs. Stevens.

7. As to the seventh paragraph of the said information, these defendants say that the letter to the governor of New Jersey, therein referred to, was in the name of, and signed by, the said Martha B. Stevens and these defendants, and not by these defendants alone.

That prior to the fifteenth of March, eighteen hundred and sixty-nine, the said executors had spended in and about said battery about twenty-two thousand seven hundred and twenty-nine dollars and seventy-three cents. The expenditures in that behalf, up, until some time in February, eighteen hundred and sixty-nine, amounting to about twelve thousand seven hundred and twenty-nine dollars and seventy-three cents, was almost, if not entirely, expended in saving and protecting the battery from damage, deterioration, and waste, and in paying

the salaries of said McClellan and Newton. The residue of the said twenty-two thousand seven hundred and twenty-nine dollars and seventy-three cents, namely, ten thousand dollars were spent in the work of finishing said battery and in paying the salaries of said McClellan and Newton. The residue of the statement of said seventh paragraph these defendants admit to be substantially correct.

8. As to the eighth paragraph of the said information, these defendants say that they admit the facts therein stated, except as hereinafter appears:

First. They deny that up to the fifteenth day of December, eighteen hundred and sixty-nine, the commissioners appointed by the governor had not seriously considered what disposition it might be advisable to recommend that the State should make of the ship upon her completion.

Second. These defendants further say that there are errors in the statements of the paragraph in question, as to the expenditures
43 of these defendants in and about the preservation and finishing of said battery, and they say that the particulars as to these expenditures, up to and including November nineteenth, eighteen hundred and seventy, are shown in Exhibit C 16 in said cause, and that the amount of those expenditures, as there shown, was seven hundred and twenty-two thousand two hundred and twenty nine dollars and seventy-three cents, as by reference to said Exhibit C 16, to which these defendants pray leave to refer, will fully and at large appear.

These defendants further say that in the said cause one of these defendants, at the request of the said the attorney-general, prepared and produced a statement showing the estimates for the doing of the several portions of the work of finishing said vessel; and also showing the actual cost of the work done on those portions, and the cost of all the work done by the said executors on and about said vessel up to the twenty-seventh of February, eighteen hundred and seventy-three, which statement said attorney-general put in evidence in said cause, and caused it to be marked Exhibit S 2.

By this statement, which was true, as these defendants verily believe, it appears that up to the date last named the total of said expenditures was the sum of nine hundred and nineteen thousand nine hundred and fifteen dollars and forty-nine cents ($919,915.49). Of this amount the sum of eight hundred and ninety-two thousand six hundred and five dollars and seventy cents ($892,605.70) was from the fund of one million of dollars appropriated by the said testator for the purpose of finishing said vessel, and the balance, twenty-seven thousand three hundred and nine dollars and seventy-nine cents ($27,309.79), was from the sale of old material, as by reference to said Exhibit S 2, to which these defendants pray leave to refer, will more fully and in detail appear.

9. As to the ninth paragraph of said information, these defendants deny the allegation that the attorney-general is ignorant whether anything, or what was done towards the determination, by a majority vote of the commissioners appointed by the governor and the governor, to what use the said vessel should be voted; whether the said executors were informed thereof, or whether they advised with the execu-
44 tors as to the details of the completion of said vessel; and these defendants say that when said information was filed said attorney-general well knew from the evidence then in said cause that the said commissioners and the governor did examine and approve of the plans for furnishing said vessels, which was adopted by said McClellan; that said approval was not expressed by a formal vote, certified to said

executors in writing, but each member of said commission, including the governor, when said commissioners were assembled together as commissioners, expressed his approval of the plan adopted, and of the course being pursued to execute that plan, and said commissioners, or any of them, at no time expressed or indicated any disapproval of what the said executors were doing in, about, and towards the finishing of said vessel.

10. As to the tenth paragraph of said information, these defendants say that they did not, as early as the month of November, eighteen hundred and seventy, but not long after that they did say, and often repeat, that they were and are unable to finish the said vessel, as directed by the said testator, without expending about four hundred thousand dollars more than the million of dollars devoted to that purpose by the said testator; and since then these defendants have spent no more money upon said vessel than was absolutely necessary in order to discharge the liabilities already incurred and to protect said vessel from destruction and deterioration and waste.

And these defendants further say that by joining in the making of the contract to sell said vessel to Schuyler, Hartley, and Graham, mentioned in this paragraph, they did not mean or intend to consent or assent that the State of New Jersey should take said vessel as a present or legacy, under the will of said testator, but simply meant and intended to dispose of said vessel to the best possible advantage, as quickly as possible, leaving the right of the State and of every other party claiming an interest in or to said vessel to be adjudged and decreed by this court as though said contract had never been made.

Nor have these defendants at any time, or in any way, assented or meant, or intended to assent to, said legacy to the State of said
45 vessel; but these defendants at all times have meant and intended to reserve their assent as to any disposition of said vessel until this court shall finally decide what party is entitled to receive said vessel, or the proceeds of the sale thereof, and then to dispose of it, or its proceeds, pursuant to the final decree of this honorable court.

11. As to the eleventh paragraph of the said information these defendant' admit the facts therein stated to be true, except that it is not true that these defendants take the same position as to the construction of said bequest as is taken by said Martha B. Stevens, and they have taken no position in reference thereto, except to submit that question to the judgment of this court.

12 to 17. As to the twelfth, thirteenth, fourteenth, fifteenth, sixteenth, and seventeenth paragraphs of the said information these defendants are advised that as no fact is alleged or charged therein, but only arguments upon matters of law, these defendants are not required, in this answer, to respond thereto.

18. As to the eighteenth paragraph of the said information, these defendants say that they do not undersand that it is therein alleged or charged that these defendants have, by neglect, or perversity, or otherwise, failed to properly do any act, or perform properly and bona fide any duty incumbent upon them, as executors as aforesaid, and that therefore they do not feel called upon to make any defensive or exculpatory statements, and they are advised that it is sufficient for them to assent, as they do, that in all things relating to said battery they have acted with integrity, and bona fide endeavored, to the best of their knowledge, skill, and understanding, to perform their duties fully, fairly, and impartially, and they assert and charge that in all things they have and each of them has done so.

19. As to the nineteenth paragraph of the said information these defendants say that said vessel cannot be finished on the general plans of the said testator, at a cost not exceeding one million of dol-
46 lars, and their reasons for so saying are fully stated in the pleadings and evidence in said cause, and as to what the general plans of said testator for said vessel were, and how nearly to those plans said vessel could have been finished with the expenditure of one million of dollars and the proceeds of the sale of the old material, and how far these defendants conformed to said general plans, and how far they departed therefrom; and as to the other inquiries in said nineteenth paragraph, in the absence of specific and definite interrogatories, these defendants are unable to make any other or more particular discovery than has been made in and by the pleadings and evidence in said cause before said information was filed.

20. As to the twentieth paragraph in the said information these defendants, answering, deny that under any circumstances now existing, they are bound to finish the said vessel, if it cannot be done at a cost not exceeding one million of dollars, and they insist and respectfully submit that they have no power or right to apply more than one million of dollars of the funds of the said testator's estate, and are under no liability or obligation to apply any of their own moneys to finishing said vessel.

21 to 27. As to the seven paragraphs numbered from twenty-one to twenty-seven, both inclusive, these defendants, answering, say that they admit that all the facts stated in those paragraphs are true, and upon the facts therein stated, and upon other facts, and for the reasons therein stated, and for other reasons, these defendants claim that at the *the* time of his death the said Edwin A. Stevens was the sole, legal, and equitable owner of said battery, and ever since his death his executors have been the sole legal owners of said vessel. But if this honorable court shall finally adjudge that the heirs at law of Robert L. Stevens, other than the said Edwin A. Stevens, have any rights in or to said battery, hten and in that case these defendants submit and insist that the right of said heirs is limited to only such small proportionate part of said vessel, or to the proceeds of the sale thereof, as is stated, for that case, in and by said information.

47 As to how much of the eighty-nine thousand one hundred and eighty-five dollars and twenty-seven cents, which, after the death of Robert L. Stevens, Edwin A. Stevens spent directly towards completing said vessel, and how much thereof towards perfecting his plans therefor, or in experimenting, or otherwise, these defendants do not know, and are unable to state.

28. As to the twenty-eighth paragraph of said information these defendants say that said suit had not only progressed as far as stated in that paragraph, but so far that the complainants and these defendants had long before concluded the taking of evidence and putting in of exhibits in said cause—had long waited for the attorney-general to take his evidence in said cause, and until long after his time for taking evidence in said cause had expired, and until said cause was ready and about to be set down and noticed for final hearing before said information was filed.

And these defendants, in further answering, deny that there has been, or is, or can be, any need or occasion to obtain or put in the evidence of experts, and they deny that such testimony is, or can be, relevant, material, or competent in said cause, and they insist that the

introduction of such evidence would be not only useless, but be dilatory, expensive, vexatious, and wasteful.

And these defendants also deny that in the said suit on the allegations therein contained none of the rights of the parties litigant can be settled; and they also deny that this court has not the jurisdiction to settle in said suit the questions raised by said information; but these defendants respectfully insist and submit that in the said suit and on the allegations therein all and every of the rights of the several parties litigant can be settled; that this court has the power and jurisdiction in the said original cause to settle every question raised by the said information; that every question raised by the said information had been raised and was at issue in the said original cause before the said information was filed, and that the information was and is entirely unnecessary and useless, and can be productive only of delay, expense, vexation, and waste, and that therefore the said information should be dismissed.

48 And these defendants, in further answering, deny that the State of New Jersey has ever requested these defendants to finish the said battery, or to expend all the moneys directed by the said Edwin A. Stevens to be expended to finish the same, or to offer the same to the State.

And these defendants deny all unlawful combinations, &c., without that, that any other matter or thing material for these defendants to make answer unto, and not herein or hereby well and sufficiently answered, confessed or avoided, traversed, or denied, is true to the knowledge or belief of these defendants; all which matters and things these defendants are ready to aver, maintain, and prove as this honorable court shall direct; and they humbly pray that said information may be dismissed, and the said original cause be permitted to proceed to final hearing and decree, according to law and the practice of this court.

JACOB VANATTA,
Solicitor, and of Counsel with the Defendants.

STATE OF NEW JERSEY,
County of Hudson, ss:

William W. Shippen and Samuel B. Dod, the two defendants making the foregoing answer, being duly sworn according to law, each on his oath, doth say that the facts stated in the foregoing answer, so far as they relate to his own acts and the acts of the executors named in said answer, are true, and so far as they relate to the acts of any other person he believes them to be true.

W. W. SHIPPEN.
S. B. DOD.

Sworn and subscribed before me April 25th, 1874.
FRED'K B. OGDEN, *M. C.*

49 *Answer of Martha B. Stevens.—Filed May 27, 1874.*

The separate answer of Martha B. Stevens, one of the defendants, to the information of Robert Gilchrist, attorney-general of the State of New Jersey, in behalf of said State.

This defendant, now and at all times hereafter, saving and reserving to herself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the said information contained,

nevertheless for answer thereunto, or unto so much and such parts thereof as this defendant is advised is material for her to make answer unto, she answering, says:

1. She admits the statements of the first paragraph of the said information to be true.

2. She admits the statements in the second paragraph of the said information to be true.

3. She admits the statements in the third paragraph of the said information to be true.

4. She admits the statements in the fourth paragraph of the said information to be true.

5. This defendant admits the statements in the fifth paragraph of the said information to be true, except in these particulars hereinafter stated—that the said informant avers that he was not aware for what purpose the executors of Edwin A. Stevens, deceased, employed General McClellan and John Newton. And this defendant avers and charges that the said informant was fully aware of the purpose of the executors of Edwin A. Stevens in the employment of said McClellan, and also of the said Newton.

50 And this defendant says that the said informant was fully aware of all the correspondence between the said McClellan and the said Newton, or either of them, and the said executors, touching the matters referred to in the said information. And this defendant charges that all of such correspondence has been produced in this cause in said information set forth and exhibited in the said cause, and all of said correspondence is well known to the said informant; and this defendant has no knowledge of any other correspondence between either the said McClellan and the said executors, or the said Newton and the said executors, or both the said McClellan and Newton and the said executors, touching the matters referred to in said information, other than that already produced and known to the informant as exhibited in the cause referred to in the said information.

And this defendant begs leave to refer to the statement, in writing, of the said McClellan and the said Newton, made in the month of February, eighteen hundred and sixty-nine, which has been produced and marked as an exhibit in the cause in chancery referred to, and which was marked Exhibit C 13–C 10.

And this defendant, one of the executors of the said Edwin A. Stevens, deceased, was informed of the said statement, in writing, made by the said McClellan and Newton, of the ninth of February, eighteen hundred and sixty-nine, at the time the same was made; and the said informant was aware of that fact prior to the exhibition of the said information.

6. And this defendant admits the statements of the sixth paragraph of the said information to be true, except as to that part thereof which charges that the attorney-general is ignorant whether said plan, as referred to, was approved by this defendant. And this defendant says that said plan, as referred to, was approved by her, and such approval was made known to the informant by the pleadings, exhibits, and the testimony in the cause referred to in said information.

7. And this defendant admits the letter of the fifteenth day of March, eighteen hundred and sixty-nine, referred to in paragraph seven of the said information, and the same was signed by this defendant

51 and her co-executors. She further says that prior to the fifteenth of March, eighteen hundred and sixty-nine, the said executors

had expended in an about said battery, twenty-two thousand seven hundred and twenty-nine dollars and seventy-three cents.

The expenditures in that behalf, until some time in February, eighteen hundred and sixty-nine, amounting to about twelve thousand seven hundred and twenty-nine dollars and seventy-three cents, were almost, if not entirely, made in protecting the said battery from deterioration and loss, and in paying the salaries of said McClellan and Newton.

The residue of the said twenty-two thousand seven hundred and twenty-nine dollars and seventy-three cents, being ten thousand dollars, was spent in the work of finishing the said battery and in paying the salaries of the said McClellan and Newton. The residue of the statements of the seventh paragraph are admitted as true in substance, this defendant begging leave to refer to the said letter and the said resolution.

8. This defendant, as to the eighth paragraph of the said bill, says she admits the filing of the replication as charged. She admits the work of finishing the battery, and the expenditure of money by the executors, this defendant approving thereof until she left for Europe, in November, eighteen hundred and sixty-nine.

And this defendant admits the statements in said eighth paragraph, except in these particulars and subject to the statements herein made.

She denies that up to the fifteenth day of December, eighteen hundred and sixty-nine, the commissioners appointed by the governor had not seriously considered what disposition it might be advisable to recommend that the State should make of the ship, upon the completion. This defendant says that there are errors in the statement in said eighth paragraph, as to the expenditures of the executors aforesaid, in and about the preservation and finishing of said battery; and this defendant says that the particulars, as to the expenditures, up to and including November nineteenth, eighteen hundred and seventy, are shown in Exhibit C 16 in said cause, and that the amount of these expenditures as there shown, which was the true amount, was seven hundred
52 and twenty-two thousand two hundred and twenty-nine dollars and seventy-three cents, as by reference to the last-named exhibit will more fully appear.

And this defendant further says that in said cause Samuel B. Dod, one of the executors, at the request of the attorney-general, prepared and produced the estimates for the doing of the several portions of the work of finishing the said vessel; which also showed the actual costs of the work done on those portions, and the cost of all the work done by the said executors on and about the said vessel, up to the twenty-seventh of February, eighteen hundred and seventy-three, which said statement the said attorney-general put in evidence in said cause, and the same was marked Exhibit S 2; said statement was true as this defendant verily believes; and it appears thereby that up to the last-named date the total amount of said expenditures was the sum of nine hundred and nineteen thousand nine hundred and fifteen dollars and forty-nine cents. Of this amount the sum of eight hundred and ninety-two thousand six hundred and five dollars and seventy cents was from the fund of one million of dollars applied by the said testator for the purpose of finishing said vessel, and the balance, being twenty-seven thousand three hundred and nine dollars and seventy-nine cents, was derived from the sale of old material, as by reference to said Exhibit S 2 will more fully appear.

9. As to the ninth paragraph of said information, this defendant denies the allegation that the attorney-general is ignorant whether any-

thing, or what, was due towards the determination by a majority vote of the commissioners appointed by the governor and the governor as to what use the said vessel should be devoted, whether the executors were informed thereof, or whether they advised with the executors as to the details of the completion of said vessel. And this defendant says that when the said information was filed the said attorney-general well knew, from the evidence adduced in the said cause, that the said commissioners and the governor did examine and approve of the plan for building said vessel, which plan was adopted by said McClellan; that said approval was not expressed by a formal vote, certified to said executors in writing, but each member of the said commis-
53 sion, including the governor, when said commissioners were assembled together as commissioners, expressed his approval of the plan adopted, and of the course being pursued to execute that plan, and neither of the said commissioners, at any time, expressed or indicated any disapproval of what the said executors were doing in, about, and towards the finishing of said vessel.

10. As to the tenth paragraph of the said information, this defendant says she is informed and believes that, not long after the month of November, eighteen hundred and seventy, but not as early as that month, two of the said executors, Mr. Shippen and Mr. Dod, did say, and did often repeat, that they were unable to finish the said vessel as directed by the said testator, without expending about four hundred thousand dollars more than the million of dollars authorized by said will to be applied to that purpose by said testator; and since that time the executors of said testator have spent no more money upon said vessel than was absolutely necessary to protect the said vessel from destruction and waste.

And this defendant, further answering, says that the said William W. Shippen and Samuel B. Dod, by the agreement made in April, eighteen hundred and seventy-one, and which was made between the commissioners of the State of New Jersey, the said William W. Shippen and Samuel B. Dod, as executors as aforesaid, and Schuyler, Hartley, and Graham did not assent to said legacy to said State as charged. The purpose of the said agreement was to sell the said vessel for as much as could be obtained for her, the situation of the said vessel being such as to make it necessary to dispose of her. It was the intention of the said executors and the said commissioners, as this defendant charges, to turn the vessel into money, and leave the parties to their respective rights to the money instead of the vessel.

And this defendant says that she has not at any time assented to the said legacy to the State of New Jersey, nor is she aware that the said William W. Shippen and Samuel B. Dod, or either of them, have assented to the said legacy to the said State, and from information declares that, as this defendant verily believes, the said William W. Shippen and Samuel B. Dod have neither of them so assented.

54 11. And this defendant admits that she and her children filed the bill in this honorable court referred to in the eleventh paragraph of the said information, to which, as one of the records of this court, she begs leave to refer. And this defendant did insist that the said legacy to the State of New Jersey was not absolute, inasmuch as the said vessel was not finished, and could not be finished, as required by the will of said testator on his general plans, as near as might be, in the discretion of the executors, for the sum of one million of dollars. This defendant then insisted, and still insists, that the said ves-

sel is a part of the residuary estate of the said Edwin A. Stevens, deceased.

12 to 17. And this defendant denies the legal conclusions set up in the said information in the twelfth, thirteenth, fourteenth, fifteenth, sixteenth, and seventeenth paragraphs of the said information; and makes no further answer thereto, inasmuch as there are no facts therein set forth which require an answer.

18. And as to paragraph eighteen of the said information, this defendant charges the fact to be that the said executors of Edwin A. Stevens have not failed to perform their duty touching the said battery, by neglect or perversity, nor in any other way or manner; on the contrary, this defendant charges that all of the said executors of Edwin A. Stevens, deceased, have carefully, conscientiously, and in entire good faith performed their duty touching the said battery; and also every other duty incumbent on them as executors. And this defendant does not perceive that the attorney-general, by the said information, has charged the said executors, or any of them, with any failure to perform their duty by neglect or perversity touching the said battery, but has only made a supposed case in that particular by way of argument.

19. As to the nineteenth paragraph of the said information, this defendant says that the said vessel cannot be finished on the general plans of the said testator at a cost not exceeding one million of dollars; and his reasons for so stating are fully set forth in the
55 pleadings and evidence in the said cause; and as to what general plans of the said testator for said vessel were, and how nearly to these plans said vessel could have been finished with the expenditure of one million dollars, together with the proceeds of the sale of the old materials, and how far the said executors conformed to the said general plans, and how far they departed therefrom, and as to the other inquiries in said nineteenth paragraph, in the absence of specific and definite interrogatories, these defendants are unable to make any other or more specific discovery than has already been made by the pleadings and evidence in the said cause before the exhibiting of the said information.

And this defendant charges that the pleadings and evidence in the said cause make a full answer to all the inquiries in the said nineteenth paragraph of the said information; and they were well known to the said attorney-general, before the said information was exhibited.

20. As to the twentieth paragraph of the said information this defendant says that she denies that neither under the circumstances in the said information stated nor those stated by the said executors, nor under any other circumstances, were, or are the said executors bound to finish the said vessel by expending more than one million dollars, and they are not bound to expend any of their own moneys in finishing of the said vessel.

21 to 27. As to the seven paragraphs mentioned, from twenty-one to twenty-seven inclusive, of the said information, this defendant, answering, says that all the facts charged therein are true; and as to the legal conclusions, this defendant submits the same to the judgment of this honorable court; this defendant insists that Edwin A. Stevens at the time of his death was the absolute owner of the said battery, and since his death the executors of the said Edwin A. Stevens have held the legal title thereto; this defendant insists that the heirs of Robert L. Stevens have no title to the said vessel and she insists that under no circumstances as disclosed could said heirs have any interest

in said vessel beyond what is insisted on in the said information.

56 As to how much of the said sum of eighty-nine thousand one hundred and eighty-five dollars and twenty-seven cents, spent by the said Edwin A. Stevens after the death of the said Robert L. Stevens, this defendant cannot set forth how much thereof was spent directly toward completing said vessel, and how much thereof towards perfecting his plans therefor, or in experimenting, as this defendant does not know.

28. As to the twenty-eighth paragraph of said information this defendant says that the said suit had not only progressed as far as stated in that paragraph, but so far that the testimony was closed on the part of the complainants, and all the exhibits in the said cause had been put in; and the complainants in that cause had waited for the attorney-general to take his evidence, and until after the time for taking evidence in the said cause on the part of the attorney-general had expired. The said cause was ready for final hearing, and ready to be noticed for final hearing, before the said information was filed.

And the defendant, in further answering, denies that there has been, or is, or can be, any need or occasion to obtain or put in the evidence of experts; and she denies that such testimony is or can be relevant, material, or competent in said cause, and she insists that the introduction of such evidence would not only be useless but be dilatory and vexatious.

And this defendant denies that in the said suit, on the allegations therein contained, none of the rights of the litigants can be settled; and she denies that this honorable court has not the jurisdiction to settle in the said cause all the questions raised by said information; on the contrary, this defendant insists that in the said cause and on the allegations, proofs, and exhibits therein contained, produced, and exhibited, and all the rights of the several parties litigants can be settled and decreed, and this honorable court has the power and jurisdiction in the said original cause to settle every question raised by the said information; and that every question raised by the said information had been raised in the said original cause, and all the questions so raised were at issue in the said original cause before the said information was filed. Said information can be only productive of delay, and should, for the reasons hereinbefore stated and herein shown, be dismissed.

57 And this defendant, in further answering, denies that the State of New Jersey has ever requested the executors of Edwin A. Stevens, deceased, to finish the said battery, or to expend all the moneys directed by the said will of the said testator to be expended to finish the said battery.

And this defendant denies all unlawful combination and confederacy, in the said information charged, without that, that any other matter or thing material for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed or avoided, traversed or denied, is true, to the knowledge or belief of this defendant. All which matters and things this defendant is ready and willing to aver, maintain, and prove, as this honorable court shall direct, and humbly prays that the said information may be dismissed, and the said original cause may be permitted to proceed to final hearing and decree, according to the course and practice of this honorable court.

LEON ABBETT,
Solicitor for Defendant.
SCUDDER & VREDENBURGH,
Of Counsel with Defendant.

STATE OF NEW JERSEY,
County of Hudson. ss:

Before me personally appeared Martha B. Stevens, who by me being duly sworn according to law, deposeth and says that she is the defendant in the foregoing answer named; that the mattars, facts, and things in the foregoing answer stated and set forth, so far as the same relate to the acts and deeds of this deponent, are true, of her knowledge, and so far as the same relate to the acts and deeds of any other person or persons this deponent believes them to be true.

M. B. STEVENS.

Subscribed and sworn before me, at Hoboken, the 19th day of May, 1874.

WM. A. MACY,
Commissioner of Deeds.

58 *The answer of Mary S. Sands, Anna A. Clarkson, and Robert L. Clarkson, her husband; Harriet Wetmore, and George W. Wetmore, her husband; Samuel Sands, Joshua Sands, and John S. Sands. —Filed December 6, 1875.*

The answer of Mary S. Sands, Anna A. Clarkson, and Robert L. Clarkson, her husband; Harriet Wetmore and George W. Wetmore, her husband; Samuel Sands, Joshua Sands, and John S. Sands, eight of the said defendants, to the information of Robert Gilchrist, attorney-general of said State, on behalf of the same, informant.

These defendants, now and at all times hereafter, saving and reserving to themselves all manner of benefit and advantage of exception to the many errors and insufficiencies in the said information contained, for answer thereto, or unto so much or such parts thereof as these defendants are advised is material for them to make answer unto, the answer and say that they admit that Edwin A. Stevens, now deceased, who died on the seventeenth day of August, in the year eighteen hundred and sixty-eight, in his lifetime, and at the time of his death, was in possession of an incomplete vessel, or the hull, machinery, and other parts of a vessel, generally known as the Stevens Battery, and of materials intended to form a part thereof, all, or almost all, located and being, and having been for many years prior to his death, at Hoboken, in the State of New Jersey, and up to and at the time of his death were still there; but these defendants deny that the said Edwin A. Stevens was the exclusive owner of said vessel; they admit that Anna A. Clarkson is the wife of Robert L. Clarkson, and that Harriet Wetmore is the wife of George W. Wetmore, and allege that on the twenty-eighth day of April, eighteen hundred and fifty-eight, Anna A. Sands intermarried with
said Robert L. Clarkson, whose wife she now is; and that on
59 the day of , Harriet Sands intermarried with
the said George W. Wetmore, whose wife she now is; and that Anna A. Clarkson and Robert L. Clarkson, her husband, and Samuel Sands are residents of the State of Connecticut; that Harriet Wetmore and George W. Wetmore, her husband, and John Sands are residents of the State of New York; that Joshua Sands is a resident of the State of Massachusetts; and that the seven persons above-mentioned, now are, and always have been, non-residents of the State of New Jersey, and have never at any time resided therein; and that on the seventeenth day of July, eighteen hundred and sixty-two, the said defend-

ants Joshua and Samuel Sands were infants under the age of twenty-one years; they admit the death of the said Edwin A. Stevens, and that he left a last will and testament, and that the same was proved, and they suppose that the said will and codicil, as far as the same are set out by the information, and the proceedings had thereunder, are truly stated, but they have no knowledge or information of any of the matters or things relating thereto, except what they have learned from the information, and therefore can neither further admit or deny the same.

They admit the death of the said Robert L. Stevens, and that he left a last will and testament, and that the same was proved according to law, and suppose that the said will, as far as the contents of the same are set out, and the proceedings under the same are correct.

They further admit that these defendants, with the other persons for that purpose named in the information, are the heirs at law of the said Robert L. Stevens and his legal representatives, but not in the technical sense understood in the information.

They, further answering, say that they have no interest in any of the matters or things in the said information set out, except those relating to the Stevens Battery, the contracts concerning the same, the moneys advanced thereon, and the mortgage to secure the same; and as to all such matters and things, except those relating to the said battery, having no knowledge or information thereof, except as aforesaid, they neither admit or deny the same, but leave them to be proved by the said informant, as he may be advised.

60 These defendants, further answering, deny that at the time of the execution of the said will of the said Edwin A. Stevens, or at any other time, he had any right, title, or interest in the said Stevens Battery, which he could dispose of by last will or otherwise, except as he was entitled to as one of the heirs at law of Robert L. Stevens, deceased, or as one of his legal representatives.

These defendants, further answering, show that by an act of Congress of the United States, approved April 14th, 1842, entitled "An act authorizing the construction of a war steamer for harbor defence," it was enacted "that the Secretary of the Navy be, and he is hereby, authorized to enter into contract with Robert L. Stevens for the construction a war steamer, shot and shell proof, to be built principally of iron, upon the plan of said Stevens; provided that the whole cost, including the full armament, engines, boilers, and equipment, in all respects complete for service, shall not exceed the average cost of the steamers Missouri and Mississippi. Sec. 2. And be it further enacted, that the sum of two hundred and fifty thousand dollars be, and the same is hereby, appropriated out of any moneys in the Treasury not otherwise appropriated towards carrying this law into effect."

These defendants further show that, by contract bearing date the tenth day of February, eighteen hundred and forty-three, made between Abel P. Upsham, Secretary of the Navy, of the one part, and said Robert L. Stevens, of the other part, the aforesaid act of Congress was referred to, and, to some extent, recited, and in which the proposal and offer of said Robert L. Stevens, to build said war steamer, purports to be copied, it was agreed by the said Robert L. Stevens that he would faithfully build and construct said war vessel conformably to the plan therein submitted, and signed by him according to the terms of the said act of the fourteenth of April, eighteen hundred and forty-two, and that he would complete the same within two years from the date of the said contract, provided Congress should make the further appropriations

necessary for the purpose within a reasonable period; and the said Abel P. Upsham, as Secretary of the Navy, did covenant and agree, on behalf the United States, with said Robert L. Stevens, to pay to said Stevens, for said war steamer, a sum which should not exceed the average cost of the steamers Missouri and Mississippi, and that
61 he would make the payments out of the sum appropriated by said act of Congress, so far as the same should extend, as by reference to said agreement, a copy whereof is annexed to the pleadings and proceedings herein, and intended to be made a part hereof, and to which these defendants pray leave to refer, will more fully and at large appear.

That by another contract, dated on the fourteenth day of November, eighteen hundred and forty-four, between John Y. Mason, Secretary of the Navy of the United States, of one part, and said Robert L. Stevens, of the other part, the contract of the tenth of February, eighteen hundred and forty-three, hereinbefore mentioned, was referred to, and in part recited, and stating that the stipulations and provisions of said contract had been found to be too loose and indefinite as to the details of its execution to regulate the action of the respective contracting parties to their mutual satisfaction; that the said Robert L. Stevens and John Y. Mason, as Secretary of the Navy, considered the said Robert L. Stevens and the United States bound by so much of said contract as relates to the dimensions, power and ability to resist shot and shell, and other qualities and arrangements of the said war steamer, and to the amount to be paid for the same, did stipulate and agree, in addition to, and in explanation and modification of, the said contract, as to the details of its execution, and to the mode and time of making compensation for the construction of the said war steamer, and in other respects, as in the said last mentioned contract set forth, among other things, it was agreed that the time for the completion and delivery of the said war steamer should be extended two years from date of the last-mentioned agreement, as by reference to the last-mentioned agreement, a copy whereof is annexed to the pleadings and proceedings herein, and intended to be made part hereof, and to which these defendants pray leave to refer, will much more fully and at large appear.

That by another contract, bearing date on the ninth day of September, eighteen hundred and forty-eight, made by and between John Y. Mason, Secretary of the United States Navy, as such Secretary, and the said Robert L. Stevens, it was agreed that the time for completing the said war steamer should be extended four years from the date
62 of the last-mentioned agreement, and it was also agreed, among other things in contract, in the words and figures following: "And it is hereby further stipulated and agreed that the said Robert L. Stevens, in lieu of other securities for the faithful performance of this contract on his part, shall make to the United States a good and sufficient mortgage, which cannot in any wise be affected by previous mortgages, or by previous judgments against the said Stevens, on all the land, docks, wharves, ships and all their appurtenances belonging to and embraced within the establishment at Hoboken, New Jersey, at which said war steamer is to be constructed, with ample power to enter upon and sell the same, in case of failure on the part of the said Stevens to fulfill his part of the contract, and that of which this is explanatory, or so much thereof as shall be necessary to complete any deficiencies on the part of said Stevens;" and that the said Robert L. Stevens, for the purpose of carrying out the stipulation above mentioned in said agreement, on or about the ninth day of September, eighteen hundred and

forty-eight, executed and delivered to the United States a mortgage in the words and figures following, to wit: "This indenture, made the ninth day of September, in the year one thousand eight hundred and forty-eight, between Robert L. Stevens, of the city of New York, of the first part, and John Y. Mason, Secretary of the Navy, for and on behalf of the United States of America, the party of the second part. Whereas it was agreed in and by a certain contract or agreement heretofore made and entered into between the aforesaid parties, among other things, in these words, following: "And it is hereby further stipulated and agreed that the said Robert L. Stevens, in lieu of other security for the faithful performance of this (said) contract on his part, shall make to the United States a good and sufficient mortgage, which cannot in any way be affected by previous mortgages, or by previous judgment against the said Stevens, on all the lands, docks, wharves, ships, and all the appurtenances belonging to and embraced within the establishment at Hoboken, New Jersey, at which the said war steamer is to be constructed, with ample power to enter upon and sell the same, in case of failure on the part of the said Stevens to fulfill his part of this contract, and that
63 of which this is explanatory, or so much thereof as shall be necessary to complete any deficiency on the part of said Stevens; and whereas an additional contract or agreement has been entered into on the date of these presents by the same parties, in which the said Stevens, reaffirming and adopting all the stipulations and agreements of the above-mentioned contract, for the consideration of having the time for completing the said war steamer extended for four years from the date of these presents: Now, in pursuance of said agreements or contracts, and in consideration of the sum of one dollar in hand paid by the party of the second part at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath given, granted, bargained, sold, aliened, enfeoffed, conveyed, and confirmed, and by these presents doth grant, bargain, sell, alien, enfeoff, convey, and confirm to said party of the second part, and to his successors, for and on behalf of the said Navy Department, and their assigns forever, all that piece or parcel of land lying and being in the township of Bergen, village of Hoboken, county of Hudson, State of New Jersey, being part of a block or square of land which is bounded on the south by First street, on the west by Hudson street, and on the north by Second street, and on the east by the proposed westerly line of Water street, and described as follows: Beginning at the southwest corner of a stone, being on the line of the easterly side of Hudson street, one hundred and twenty-five feet (on said easterly line) north of the northerly side of First street, and running thence on said easterly line of Hudson street, north nineteen degrees thirty minutes east two hundred and sixty feet to a stone; thence south sixty-six degrees east three hundred and forty-five feet to a stone; thence south twenty-eight degrees forty-five minutes west two hundred feet to a stone; thence south sixty-one degrees fifteen minutes east twelve feet to a stone; thence south twenty-eight degrees forty-five minutes west one hundred and fifty-nine feet nine inches to the northerly side of First street; thence by the northerly side of First street north seventy degrees thirty minutes west one hundred and eighty-six feet to stone; thence north nineteen degrees thirty minutes east one hundred and twenty-five feet to a stone; thence north seventy degrees thirty minutes west one
64 hundred and twelve feet to a stone, at the place of beginning. On which described premises is now excavated and erected a ship basin or dock, with ships, together with a new brick shop and

machinery within, and with which is to be constructed the said war steamer, together with all and singular the privileges and advantages, with the appurtenances to the same belonging or appertaining; and, also, all the estate, right, title, interest, property, claim, and demand whatsoever of the said party of the first part of, in, and to the same, and of, in, and to every part and parcel thereof, to have and to hold all and singular the described land, basin, and premises, with the appurtenances, to the said party of the second part as aforesaid, his successors and assigns, "to the only proper use and benefit and behoof of the said party of the second part as aforesaid, his successors and assigns forever; provided always, and it is agreed by and between the parties to these presents, that if the said party of the first part shall and do well and truly fulfill and perform all covenants and agreements in manner and form as in the said contracts stipulated by him to be done, or complete any deficiency on his part arising, in good faith and lawfully, that then and from thenceforth these presents and the said obligation, and everything therein contained, shall cease and be void, anything herein contained to the contrary notwithstanding; and the said Robert L. Stevens, for himself, his heirs, executors, and administrators, doth covenant and grant to and with the said party of the second part as aforesaid, and his successors, that the said party of the second part, or his successors, shall and may, in case default shall be made in the completing and delivery of the said war steamer at the expiration of four years from the date of these presents, according to the condition and stipulations in said contract above mentioned, peaceably and quietly enter into and upon all and singular the above granted and bargained premises, with the appurtenances, and to sell and dispose of the same, and all equity of redemption of the said party of the first part, his heirs, executors, administrators, or assigns therein, by public auction, according to the law in such case made and provided; and as the attorney of the said party of the first part, for that purpose by these presents duly authorized, constituted, and appointed to make and deliver to the purchaser or purchasers thereof a good and sufficient deed or deeds
65 of conveyance for the same, and out of the moneys arising from such sale to retain any dues or deficiencies that may have accrued or arisen by reason of the failure on the part of the said Stevens to fulfill his part of the aforesaid agreement, or so much of said moneys as shall be necessary to complete any deficiencies as aforesaid on the part of said Stevens, together with the costs and charges of advertisement and sale of the said premises, rendering the overplus of said purchase money (if any) to the said Robert L. Stevens, his heirs, executors, administrators, or assigns, which sale so to be made shall forever be a perpetual bar, both in law and equity, against the said Stevens, his heirs and assigns, and all other persons claiming or to claim the premises, or any part thereof, by, from, or under them, or any of them.

In witness whereof the party of the first part has hereunto set his hand and seal the day and year first above written.

(Signed) ROBERT L. STEVENS. [L. S.]

Signed, sealed, and delivered in the presence of—
ROB'T GILCHRIST, Jr.

NEW JERSEY,
Hudson County, ss:

On the eighteenth day of September, A. D. one thousand eight hundred and forty-eight, before me, Robert Gilchrist, jr., commissioner for tak-

ing the acknowledgments and proofs of deeds, residing at Jersey City, personally appeared Robert L. Stevens, who, I am satisfied, is the grantor-mortgagor named in and who executed the above mortgage; and I having first made known to him the contents thereof, he thereupon acknowledged that he had signed, sealed, and delivered the same as and for his voluntary act and deed. All of which I certify.

ROB'T GILCHRIST, JR.,
Commissioner as aforesaid.

Received in the office and recorded September 20th, 1848.

R. GILCHRIST, *Clk.*

Which said mortgage is recorded in Liber 5, page 232, of said
66 Hudson County, in the liber of mortgages, and to which these defendants pray leave to refer, will more fully and at large appear.

And these defendants, further answering, show that, by an act of Congress bearing date the fourteenth day of April, one thousand eight hundred and forty-two, an appropriation was made of two hundred and fifty thousand dollars; and by an act of Congress of March the third, one thousand eight hundred and fifty-five, a further appropriation was made of two hundred and fifty thousand dollars; and by an act of Congress of August sixteenth, one thousand eight hundred and fifty-six, a further appropriation was made of eighty-six thousand seven hundred and seventeen dollars and eighty-four cents were paid out and expended under the said contracts for work done and materials furnished in the construction of the said battery; and that on the seventeenth day of July, one thousand eight hundred and sixty-two, the Government of the United States had advanced, under the contracts aforesaid, the sum of five hundred and eighty-six thousand seven hundred and seventeen dollars and eighty-four cents, which had been appropriated for the purpose of purchasing materials and for work done on the said battery, and had the right at their pleasure to sell the said battery, or otherwise dispose of it, and also the land described in said mortgage, and all equity of redemption in the same; and as the said Robert L. Stevens was dead, and as he had expended some money and contributed much labor and time under the said contracts, and the government being unwilling to expend any more money, and at the same time being willing to do ample justice to all the heirs of Robert L. Stevens and to give them all the interest of the United States in and to the said battery, the following joint resolution was passed by the Congress of the United States, which was approved by the President July the seventeenth, eighteen hundred and sixty-two: "A resolution releasing to the heirs at law of Robert L. Stevens, deceased, all the right, title, and interest of the United States in and to the Stevens Battery."

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That all the right, title, and interest of the United States in and to the Stevens Battery be,
67 and the same are hereby, released and conveyed to the heirs at law of the said Robert L. Stevens, or their legal representatives."

These defendants further show that the heirs and legal representatives of the said Robert L. Stevens, at the date of the aforesaid resolution, and who, as such heirs at law and legal representatives, were entitled to the said battery and to all the rights of the United States under said contracts, the moneys paid thereon, the mortgage taken for

the faithful performance of the same, and the property embraced within said mortgage, under the said resolution, were Edwin A. Stevens, James A. Stevens, Sophia L. V. C. Stevens, Esther B. Stevens, Julianna Conover, Matilda, the wife of John G. Brown, Anna A., wife of Robert L. Clarkson, Harriet, wife of George W. Wetmore, Joshua Sands, John S. Sands, Samuel Sands, and Mary S. Sands.

And these defendants, further answering, show that after the passage of the said resolution the battery was not moved from the yard where it was commenced and constructed, and has not been removed from the said yard, but remains there still. They admit that the said Edwin A. Stevens, immediately after the passage of the said resolution, but without the consent of the defendants, or any of them, took charge of the said battery, and they allege, with full knowledge of the said resolution; and it may be true that he expended some money on the same, and that his executors since have expended some money on the same, but they deny that by so doing any right was acquired in the said battery, or any title to the same by such expenditures; and they deny that the right, title, or interest of the defendants in the said battery was in any manner or degree affected or impaired by such expenditures, or that the said Edwin A. Stevens had any right to dispose, by his last will, of any interest in the said battery, except such interest as he had therein as one of the heirs at law of the said Robert L. Stevens, under the said resolution of Congress.

They further allege that he had no other right to the said battery, except as one of the heirs at law of the said Robert L. Stevens as aforesaid, and that if he expended any money on the same, or if his executors have expended any money on the same, it was done without the knowledge or consent of these defendants, or any of them,
68 and that there is no lien on the said battery for such expenditures, and that they are not entitled to any allowance for the same.

These defendants submit that at the time of the passage of the said resolution the United States were owners of the said battery, and failure having been made by the said contractor or mortgagor (Robert L. Stevens) in faithfully performing the conditions in said contract mentioned, they had the right, and did threaten to sell the same, and had also the right to sell the land embraced within said mortgage, and to be reimbursed to the fullest extent for moneys advanced, with interest from time of advancement, and that by virtue of the said resolution the defendants and the other heirs of the said Robert L. Stevens, became the owners of the said battery, and had also the right to sell the land embraced within said mortgage, and all equity of redemption in the same, and all rights of the United States for money advanced by them; and the said Edwin A. Stevens, having taken possession of the said battery and converted it to his own use, his executors must account to the defendants and the other heirs of the said Robert L. Stevens for the value thereof, or the said vessel should now be sold, and the proceeds of such sale be accounted for, to the said heirs; and his executors and executrix having confused and converted to their own use his and their property in the same, with the property of the other heirs and legal representatives of Robert L. Stevens, they must account not only for all moneys paid under said contract, but for the value of the property converted and sold, and for the property confused with the property of these defendants, with interest from the time of such conversion and confusion, and the said vessel should be sold, and the land embraced within said mortgage should also be sold under a decree of this court, and the

said executors and executrix of Edwin A. Stevens must account for the said advances,and the value of the property so converted and confused, with interest from the times of the advances, and from the times of such conversion and confusion, and also for the proceeds from the sale of said lands and battery; or if this court should be of opinion that the United States were not such absolute owners of the said battery as to enable them absolutely to dispose of the same, these defendants submit
69 that the United States had a lien upon it for all the moneys advanced by them and expended on said battery, with interest from the time of such advances, which created a debt upon the whole estate of Edwin A. Stevens; and that by the said resolution, such lien and debt was transferred to and passed to the heirs at law of the said Robert L. Stevens; and the said Edwin A. Stevens having taken possession of the said battery, and disposed of the same to his legatee, who, by virtue of his will, now claims the same, the executors and executrix of the said Edwin A. Stevens ought to account to the said heirs of the said Robert L. Stevens for the said advances so made by the United States and expended on the said battery, with the interest from the time of the said advances; or otherwise the said advances and interest should be declared to be the first lien on the said battery, and the same should be sold under a decree of this court, and also the premises embraced within said mortgage, and all equity of redemption in and to the same, and out of the proceeds of such sale such lien should be first paid and satisfied; and if the proceeds of said sale are not sufficient to satisfy the debt of the United States, the same should be satisfied out of the estate of Edwin A. Stevens.

And these defendants further allege that they had no knowledge or information of any of the matters or things in said information contained, or that they had any right, title, or interest in or to said battery until they were served with a notice and affidavit of S. B. Dodd, one of the executors of Edwin A. Stevens, dated April eleventh, eighteen hundred and seventy-two, for the purpose of selling the same.

And these defendants, further answering, say that they are willing to submit their rights to the determination of this court in this suit, and that a decree should be made therein finally settling the rights of all parties thereto.

All which matters and things these defendants are ready to aver, maintain, and prove, &c.

And these defendants deny that there is any other matter, cause, or thing in the information contained material or necessary for
70 these defendants to make further answer unto, and not herein and hereby well and sufficiently answered, avoided, traversed, or denied, is true, to the knowledge or belief of these defendants.

WILLIAMSON & MAN,
Solicitors for Defendants.
B. WILLIAMSON,
WALTER L. CLARKSON,
Of Counsel with Defendants.

Answer of infants, by guardian.—Filed June 2, 1874.

The joint and several answer of John Stevens, Edwin A. Stevens, Robert L. Stevens, Caroline B. Stevens, Charles Albert Stevens, and Richard Stevens, infants, under the age of twenty-one years, by Martha B. Stevens, their guardian ad litem, to the information of Robert Gilchrist, attorney-general of the State of New Jersey.

These defendants, saving and reserving to themselves all and all

manner and advantage of exception to the many errors, uncertainties, and insufficiencies in the said information contained, for answer thereunto, or unto so much and such parts thereof as these defendants are advised is material for them to make answer unto, they, answering by their guardian, say—

That they are strangers to all and singular the matters and things in the said information contained, otherwise than that these defendants have heard that Edwin A. Stevens, their father, in the said information named, was seized of and entitled to certain lands and tenements in the State of New Jersey, and possessed of considerable personal estate, and among other things of the ship or vessel called the Stevens Battery, and made some disposition thereof by his will and testament and by a codicil thereto, in which these defendants have some interest. And these defendants, being infants, submit themselves to the judgment of this honorable court, and hereby humbly hope that what-
71 ever right or interest they have in the real and personal property of their deceased father shall be protected and saved to them; without this, that any other matter or thing in the said information contained, not herein and hereby well and sufficiently answered unto, confessed, or avoided, traversed, or denied, is true; and they pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

M. B. STEVENS,
Guardian of said Infant Defendants.

LEON ABBETT,
Sol'r for Def'ts.
SCUDDER & VREDENBURGH,
Of Counsel with Def'ts.

STATE OF NEW JERSEY,
Hudson County, ss:

Martha B. Stevens, guardian of the infant defendants above named, being duly sworn according to law, on her oath saith that the matters, facts, and things in the foregoing answer contained, so far as the same relate to the acts and deeds of this defendant, are true, and so far as the same relate to the acts and deeds of any other person or persons, she believes them to be true.

M. B. STEVENS.

Sworn and subscribed before me, at Hoboken, this 30th day of May, 1874.

WM. A. MACY,
Commissioner of Deeds.

HOBOKEN, N. J., *May 2d*, 1876.

W. L. CLARKSON, Esq.:

DEAR SIR: The value of the original engines of the battery at the time the ship came into our hands as executors of E. A. Stevens, was, say, 1,110.00 pounds of metal, at, say, two cents per pound, and something extra for brass, or say from $25,000 to $30,000. The cost of these engines, however, appears from an account book in our possession to have been $136,888.13 as they came from the shop, to which must be added, say, twenty per cent. for work in the yard, fitting up, &c., or say, as an approximate sum, $164,652.75. I presume you
72 understand the reason of the difference between cost and value, viz, that we were constrained, under the advice of the profes-

sional experts employed, to remove the old engines, because of their insufficiency, and because they interfered with the carrying out the general plans of E. A. Stevens for furnishing the vessel, thus reducing them to the value of old metal.

Yours,
(Signed) W. W. SHIPPEN.
85 Nassau street, N. Y.

I think the old engines were taken out of the ship about 1870.
(Signed) W. W. SHIPPEN.

Admission.

We admit the non-residence, marriage, and age of defendants, and their want of actual knowledge of their rights to the Stevens Battery, but do not admit that they did not have legal notice and knowledge of their rights or of such facts as should have put them upon inquiry; and also that the mortgage in said answer set forth is a true copy of the one registered in Hudson County clerk's office, in New Jersey, and executed and recorded as stated in said answer; and also admit the original value of the machinery taken out of said battery, as stated in a letter of W. W. Shippen herein, dated May 2d, 1876.

LEON ABBETT,
FREDC. B. OGDEN,
Solicitors for Defendants Edward P. C. Lewis and Mary P. Lewis.

73 The following testimony and proofs were taken:

In chancery of New Jersey.

BETWEEN MARTHA B. STEVENS ET ALS., complainants,
and
WILLIAM W. SHIPPEN, SAMUEL B. DODD, FITZ-JOHN PORTER, et als., defendants.

Examination of witnesses, etc., in the above-entitled cause, on the part of the complainants, taken before me, Isaac Romaine, a master and examiner of said court, at my office at 31 Montgomery street, Jersey City, N. J., on Thursday, April 11th, 1872, at ten o'clock in the forenoon.

Present, Isaac W. Scudder, counsel for complainants; Jacob Vanatta, for defendants Shippen and Dod; the attorney-general, by Alexander T. McGill, for the commissioners, Benjamin G. Clark, William W. Shippen, Fitz-John Porter, and the governor for the time being; Frederick B. Ogden, for Edward P. C. Lewis and wife.

Counsel for complainants offers in evidence a certified copy of the will of Edwin A. Stevens, which is marked Exhibit C 1, on the part of complainants.

74 Also offers in evidence a certified copy of the will of Robert L. Stevens, which is marked Exhibit C, 2, on part of complainants, dated August 20, 1846.

Also, offers in evidence a certified copy of a resolution of Congress relinquishing the right of the United States to the Stevens Battery, passed by the Senate July 15th, 1862, and passed by the House July 16th, 1862, which is marked Exhibit C 3, on part of complainants.

Also, offers in evidence a resolution of Congress giving the consent of Congress to the reception of a certain bequest to the State of New Jersey, under the will of the late Edwin A. Stevens, approved July 1st, 1870, which is marked Exhibit C 4, on part of complainants.

SAMUEL B. DOD, a witness produced on the part of the complainants, being duly sworn, on his oath saith:

I was acquainted with the condition of the battery prior to the death of Edwin A. Stevens; I had visited it six or eight years before his death; once before the death of Robert L. Stevens and subsequently; when I saw it first, during the life of Robert L. Stevens, it was in an excavated basin between First and Second streets, in Hoboken, and under and east of Hudson street, on the premises leased by Robert L. Stevens for nine hundred and ninety-nine years; my impression is it was leased from the Stevens family; when I next saw it, after the death of Robert L. Stevens, Edwin A. Stevens had possession and control of it; I was admitted to the yard on permits from him; it was kept enclosed and unapproachable, except by permits from Edwin A. Stevens during his life; access was obtained to the battery during the lifetime of Edwin A. Stevens by permits from him, written, or by his
75 personal direction. During the lifetime of Edwin A. Stevens, and after the death of Robert L. Stevens, he, Edwin A., expended moneys on the battery amounting to more than $89,000; the precise amount of which, as stated in the supplemental bill, being $89,185.27 on the work on the engines, was taken from the books of the said Edwin A. Stevens. I have a printed copy of the report of S. H. Stringham, Commander William Inman, Captain Thomas A. Dornin, Alban C. Stimers, chief engineer, dated December 24, 1861, addressed to Hon. Gideon Welles, Secretary of the Navy; also the minority report of Professor Henry, who was a member of the same commission; that pamphlet I found among the battery papers at the battery office, located in the battery yard, after Mr. Stevens' death (Edwin A.); bound in with the pamphlet were the comments of Mr. Stevens on that report; the pamphlet is entitled "Stevens Battery Memorial to Congress," which memorial, on page 42, is dated February, 1862.

(Said pamphlet is offered in evidence, and is marked Exhbiit C 7, on part of complainants.

The attorney-general offers no objections to the pamphlet for want of proof, but reserves the privilege of correcting the same if any mistakes appear therein.)

The report of that commission is the report referred to in the supplemental bill. I was with Mr. Stevens in Washington, in March, 1862. I was there two or three weeks. Mr. Stevens' business at Washington at that time was he was attempting to sell his battery to the U. S. Government. I simply accompanied Mr. Stevens at his request, and explained to a number of gentlemen connected with Congress and the departments the drawings and plans of the battery. I obtained the information that I imparted to members of Congress and of
76 the departments from Mr. Stevens himself. I made the explanations in his presence and while he was away. He was not at that time asking Congress to relinquish any claims to the vessel, at least not to my knowledge. I don't know what time Mr. Stevens left Washington that spring. I left him there. After I left Washington in the spring of 1862 I was in Hoboken in October, 1862. I did not visit the battery at that time. After 1862 Mr. Stevens made efforts to dispose of the battery in Europe. Mr. Stevens sailed for Europe the

day after the codicil to his will was drawn and signed. I have never seen him since. While in Europe he employed General McClellan as his agent. I know from letters of Mr. Stevens and General McClellan that efforts were made in behalf Mr. Stevens for the sale of the battery to the French, Prussian, Austrian, and the Russian Governments.

And being again examined in chief, he says:

Q. Please tell us the whole amount which had been expended on the battery up to the time of Robert L. Stevens' death, and tell us how much of that amount had been expended by Robert L. Stevens.

A. The total expenditure was $613,579, of which Robert L. Stevens expended $113,579; that was up to 1856. The balance of that total was furnished by the United States Government.

Q. After the death of Robert L. Stevens, and up to September 5th, 1857, did Edwin A. Stevens, of his own funds, expend any money on the battery; and, if so, what amount?

A. As the executor of Robert L. Stevens he spent $89,185.37. The reason that Edwin A. Stevens claimed that he expended that money as the executor of Robert L. Stevens was, or I suppose it was, that the vessel belonged to the United States Government at that time.

77 Q. After that time, during his lifetime, did Edwin A. Stevens spend any more money in the construction of that vessel; and, if so, how much money?

A. He did spend money in the maintenance and protection of the vessel; in experiments connected with the completion of the ship; I can give you the exact amount by reference to the books.

Q. Ever since you first saw the battery, has it been located in the same place, and where has that been?

A. Yes, sir; and in an enclosed yard between First and Second streets, in the city of Hoboken, in an excavated basin, extending partly under and east of Hudson street; those premises were leased by Robert L. Stevens for a term of 999 years.

And being cross-examined by Mr. Mann, he says:

Q. Does it appear anywhere in Edwin A. Stevens' books that this payment of $89,185.37 was made by him as executor of Robert L. Stevens?

A. I don't know, sir; the books are kept generally so much charged to the battery; the statements of that expenditure are taken from printed statements of Edwin A. Stevens which are in evidence; I refer to his letters to the Secretary of the Navy in Exhibit C 6.

Q. Do not the battery books show from what source the money came for these expenditures?

A. No, sir.

Q. Do not the books of Edwin A. Stevens, as executor for R. L. Stevens, show these expenditures?

A. That I do not know, and do not know whether any such books exist.

Q. Did the government make any further payments on account of the battery other than the $500,000?

A. No, sir.

78 Q. Have you any knowledge of anything being paid under the appropriation made by act of Congress, August 16th, 1856, appropriating $86,717.84?

A. I have no knowledge of it; I find no claim by the United States Government to have advanced more than $500,000, and no acknowledgment by Mr. Stevens to have received more than $500,000.

S. B. DOD.

Whereupon the examination was adjourned to Saturday, March 1st, 1873, at 10 o'clock in the forenoon, at the same place.

Q. What was done with the machinery that was in when the alterations were made?

A. With the exception of three smaller engines, two anchor hoisting and one blowing engine, it was all sold as old iron; two of these engines are in the yard, and one is at the Stevens Institute, none of them a part of the ship.

Q. The repairs of machinery, are they repairs of old machinery, or are they repairs of machinery put in by the executors?

A. The repairs were entirely, unless with some trifling exceptions, upon the old boilers which remain in the ship.

Q. You have spoken of a small engine which was put in the institute; was that of any value for use as a steam engine for mechanical purposes?

A. Very trifling; its worth for old iron was from $60 to $70.

WILLIAM W. SHIPPEN, a witness produced on the part of the complainants, being duly sworn, on his oath saith:

I have resided at Hoboken since January 1st, 1847; my connection with the Hoboken Land and Improvement Company commenced at that time; I have been connected with that company in some
79 capacity since that time; at that time Robert L., Edwin A., and John C. Stevens were the principal managers of that company; my knowledge of the business of Robert L. and Edwin A. Stevens began about that time; at that time the basin for the battery was dug out, shops were built, the tools were there, and a short piece of the keel was laid, which was afterwards taken up; those preparatory works were on the same ground that the battery is now; that ground was in possession of Robert L. Stevens; he had a lease from the heirs of John Stevens for a long time, 90 or 999 years, I forget which; the consideration was for a sum in gross, which had been paid; my impression is that the lease was made to him by Edwin A. Stevens, as trustee, before the organization of the Hoboken Land and Improvement Company; the plot is 425 feet by an average depth of 400 feet, out of which a tract 100 feet square has been taken that was not devoted to battery purposes; on the death of Robert L. Stevens, Edwin A. Stevens came in possession of that property as owner, and continued in possession up to the time of his death; he came in possession under the lease and as devisee; since the death of Edwin A. Stevens his executors have been in exclusive possession of it; they claim it under the lease, the will of Robert L. Stevens, and the will of Edwin A. Stevens; those premises were devoted to the uses of the battery before I knew them; the books show that the work was commenced and the shops put up, I think, in 1842.

Q. What do you consider the fair annual rental value of the premises devoted to battery uses from the time the work was commenced up to the time of the death of Edwin A. Stevens?

A. A fair rent for the property from 1843 to 1856 would average $7,200 a year, and from that time to 1866 a fair rent would be $10,800
80 a year; from 1866 to the present time the number of lots have been decreased, but the remainder have enhanced in price; a fair annual rental would be $11,280.

Q. After the construction of the battery was commenced, who, in the lifetime of Robert L. Stevens, had possession and control of the property?

A. Robert L. Stevens had exclusive possession, so much so that nobody was permitted in the yard except by Mr. Stevens' order, except an officer of the U. S. Navy and the officer's clerk; the officer was there under orders of the government as inspector of the vessel.

Q. State how the possession and control of the vessel was after the death of Robert L. Stevens, and during the lifetime of Edwin A. Stevens.

A. Edwin A. Stevens exercised the same possession and control and in the same way that Robert L. Stevens had.

Q. During the lifetime of Edwin did any officer of the government have access to the yard, except on order of Edwin A. Stevens?

A. I think not.

Q. Since Edwin's death has the possession by the executors been the same as the testator's?

A. Yes, sir.

Q. During the lifetime of Edwin A. Stevens, did you ever have any dispute as to his being the exclusive owner of the battery, or any one claim an ownership in her except him?

A. No, sir; except the United States, up to the passage of the resolution of 1862, claimed to have an interest.

Q. After that resolution of Congress was passed, did any person, except Mr. Stevens, lay any claim to that property by virtue of that resolution or otherwise?

A. Not that I heard of.

Q. You have heard the evidence of Mr. Dod given in this case, have you not?

A. Yes, sir.

Q. Were the statements which he made as to the amount ex-
81 pended on the battery by Robert L. Stevens those afterwards expended by Edwin A. Stevens in his lifetime, and those afterwards made by the executors by order of their testator down to September 11th, 1871, correct?

A. They are correct.

And being cross-examined by Mr. MANN, he says:

Q. What rent did Robert L. Stevens and Edwin A. Stevens pay for the rent of the lots?

A. It was a round sum paid in gross on the full term of the lease—perhaps $1,000.

Q. At what date did the property again come in possession of the Hoboken Land and Improvement Company?

A. Probably in the early part of 1869; it was shortly after Mr. Edwin A. Stevens' death.

Q. Was not the battery always regarded by Edwin A. Stevens, during his lifetime, up to the act of 1862, as the property of the government, and treated as such by him?

A. It was, so far as I know, except as to the claim he had upon it for money advanced by himself for Robert L. Stevens over the amount paid by the government.

Q. Did he not in all his dealings and correspondence with the government act as the acting executor of his brother, Robert L. Stevens, the contractor?

A. I think he did; he signed his communications to the government in that way, at any rate.

Q. Do you know what knowledge he had of the wording of the act of Congress of 1862 relating to the release of the battery?

A. I do not know; he always treated the battery as belonging to him after that.

Q. Do you know who drew that act; and, if so, at whose request it was drawn?

A. I was told by one Thomas Hall, of New York, that the
82 resolution was drawn by Senator Hale, at his (Hall's) solicitation to do something to settle the question about the Stevens Battery; and I know that Mr. Stevens was very much astonished when he found that this act had been passed; it was without his knowledge. Mr. Stevens never stated to me that he was acquainted with the text of that resolution.

Q. Up to the date of that resolution of 1862 did Mr. Stevens contemplate asking remuneration for the use of that land?

A. No, sir.

W. SHIPPEN.

Taken, sworn to, and subscribed, this 22d day of March, A. D. 1873, at Jersey City, before me.

ISAAC ROMAINE,
Master in Chancery.

EXHIBIT C 6.

Robert L. Stevens' war steamer at New York.

This indenture of two parts, entered into this 10th day of February, in the year of our Lord one thousand eight hundred and forty-three, by and between Abel P. Upshur, Secretary of the Navy, of the one part, and Robert L. Stevens, of the city of New York, in the county of New York, in the State of New York, of the other part, witnesseth:

Whereas an act of Congress, approved on the 14th day of April, 1842, authorized the Secretary of the Navy to enter into a contract with Robert L. Stevens for the construction of a war steamer for harbor defence, shot and shell proof, to be built principally of iron, upon the plan of the said Stevens, the whole cost of which, including the hull, armament, engines, boilers, and equipments, in all respects complete for service, should not exceed the average cost of the steamers Missouri and Mississippi; and whereas by the said act, the sum of $250,000 was appropriated towards carrying the same
83 into effect; and whereas the said Robert L. Stevens has, on the day of the date hereof, submitted to the Secretary of the Navy the following proposition, in writing, in regard to the mode and manner in which he will construct said war steamer, the original of which said writing is included in this indenture, and signed by said Stevens, to wit:

Whereas an act of Congress, approved on the 14th day of April, 1842, authorized the construction of a war steamer for harbor defence, and empowered the Secretary of the Navy to enter into contract with Robert L. Stevens for her construction, I, the said Robert L. Stevens, do hereby offer to build a war steamer, principally of iron, in the manner following, the whole cost of which, including the hull, armament, engines, boilers, and equipments in all respects complete, and calculated for the defence of the harbor of New York, shall not exceed the average cost of the steamers Missouri and Mississippi.

The war steamer above referred to is to be shot and shell proof against the artillery now in use on board vessels of war, viz, from 18-pounders to 64-pounders; to be propelled by the submerged machinery called

Stevens' circular shells. The said war steamer shall have greater speed than any of our steam vessels of war now built. The whole engine to be out of the way of shot from the vessel of any enemy. The said war steamer shall have four or more condensing engines, the combined effective force of which shall exceed that on board the Missouri or Mississippi by at least fifty per cent. when worked at their usual pressure of steam, viz, 12 inches. The said war steamer shall have four iron boilers, the surface of which exposed to the fire shall also exceed that of either the above-named vessel's boilers fifty per cent. The said war steamer shall have wrought-iron shafts of sufficient strength.

84 The said war steamer shall not be less than two hundred and fifty feet long from the outside of the stem to the after side of the stern-post, but as much longer as I may choose to make her; a forty feet beam, and twenty-eight deep from the upper side of the iron deck to the under part of the keel, measured amidships. The said war steamer to be much sharper forward and aft than the above-mentioned vessels; the upper-deck to be of iron; the other decks of wood or iron, as I may choose. The deck-beams to be secured to the side by iron braces. The hull shall be constructed of plates of iron, to average half an inch in thickness, well secured together. The ribs shall be six inches deep at the sides, properly proportioned to the keel, and from three-eighths to half an inch thick, and placed two feet apart, except in particular places, where it may be necessary to place them nearer together, as under engines, &c. The sides of the said war steamer shall be four and a half inches thick above water, composed of iron plates, and tapered off below the water-line. The said war steamer shall be pierced for six or more guns. All parts of the said war steamer, her engines and equipments, to be furnished in a plain, substantial, and workmanlike manner; the engines and boilers to be equal in style and finish to those of the New Philadelphia, on the Delaware River. An artificial blast to be kept up by two separate small engines, to increase the effect of the furnaces. The said war steamer to have air-tight fire-rooms, after the plan of E. A. Stevens, by which the said war steamer below decks will be kept comparatively cool and free from gas from the furnaces. The guns to be of large dimensions, designed principally for shells, and to be of the same average value as those in the above-named steam frigates.

I reserve the right of varying the size of any or all of the parts of said war steamer or her machinery; provided, however, that they shall not be made less than herein expressed.

85 The above-described war steamer may be made to move about the harbor or up the North River to fresh water, with a very small quantity of fuel, at a moderate speed, and will have the capability of burning a large quantity to advantage when great speed is required.

The said war steamer to be paid for by the United States according to the provisions of said act of Congress; the said United States to pay for the same a sum which shall not exceed the average cost of the before-named steam frigates, and payments to be made out of the sum appropriated by said act of Congress, so far as the same shall extend. And I engage to complete the said war steamer within the period of two years from the date of the indenture to be made between the Secretary of the Navy and myself, provided Congress shall make the further appropriations necessary for the purpose within a reasonable period.

ROBERT L. STEVENS.

WASHINGTON CITY, *February* 10, 1843.

Now, know all men by these presents that the said Robert L. Stevens hereby covenants and agrees on his part with the said Abel P. Upshur, Secretary of the Navy as aforesaid, that he will faithfully build and construct said war steamer conformably to the plan herein submitted and signed by him, according to the terms of the said act of the 14th of April, 1842, and that he will complete the same within two years from the date of this indenture, provided Congress shall make the further appropriations necessary for the purpose within a reasonable period.

And the said Abel P. Upshur, as Secretary of the Navy as aforesaid, hereby covenants and agrees, on behalf of the United States, with the said Robert L. Stevens, to pay the said Stevens for the said war
86 steamer a sum which shall not exceed the average cost of the steamers Missouri and Mississippi, and that he will make the payment out of the sum appropriated by said act of Congress so far as the same shall extend.

In witness whereof the said Abel P. Upshur has set his hand and his seal of office, and the said Robert L. Stevens has set his hand and seal interchangeably, the day and year first above mentioned.

[SEAL.] A. P. UPSHUR,
Secretary of the Navy.

[SEAL.] ROBT. L. STEVENS.

Signed, sealed, and delivered in the presence of—
J. D. SIMMS.

Second contract.—Explanatory.

This indenture, made this 14th day of November, A. D. 1844, between John Y. Mason, Secretary of the Navy of the United States, of the one part, and Robert L. Stevens, of the city of New York, of the other part, witnesseth:

That whereas a contract was entered into on the 10th day of February, A. D. 1843, between the said Robert L. Stevens and Abel P. Upshur, Secretary of the Navy, under which the said Stevens was to construct and deliver into the possession of the Navy Department a war steamer, upon conditions therein expressed and agreed upon to be performed by the said Stevens and the Navy Department of the United States; and whereas the stipulations and provisions of said contract have been found to be too loose and
87 indefinite as to the details of its execution to regulate the action of the respective contracting parties to their mutual satisfaction, and might defeat the object proposed by the act of Congress, under the authority of which it was entered into; therefore the said Robert L. Stevens and John Y. Mason, as Secretary of the Navy of the United States, considering the said Stevens and the United States bound by so much of the said contract as relates to the dimensions, power, ability to resist shot and shells, and other qualities and arrangements of the said war steamer, and to the amount to be paid for the same, do hereby stipulate and agree in addition to, and in explanation and modification of, the said contract as to the detail of its execution and to the mode and time of making compensation for the said construction of the said war steamer, and in other respects as herein set forth, that the aforesaid contract entered into on the 10th day of February, 1843, by said Robert L. Stevens and Abel P. Upshur shall be, and is hereby, modified and explained as follows, viz: It is hereby mutually agreed and stipulated by and between the said Robert

L. Stevens and John Y. Mason, Secretary of the Navy, that the time for the completion and delivery of the war steamer aforesaid shall be extended two years from the date of this present agreement; that the depth of the said war steamer shall be measured from the upper deck, whether of iron or wood, and that the keel shall not exceed one foot in depth; that the boilers of the said war steamer shall bear a proof of thirty pounds to the square inch; that the plates and ribs of the iron work of the hull of the said war steamer shall be made from wrought or rolled iron; that the thick sides of the said war steamer shall be properly tapered below the water-line down to the thickness of the side or bottom plates, so as to secure the proper safety from shot and shells, as specified in the original contract; that the said war steamer shall be furnished with, as well as pierced for, six or more guns, which
88 guns shall be subjected to and pass inspection and proof to the satisfaction of the Secretary of the Navy; that the comparative average value of those guns with those of the steamers Missouri and Mississippi shall be construed to comprise their carriages and all their equipments necessary for working them, except for ammunition, shot, and shells, and that the two small engines for the artificial blast shall be furnished as well as put up at the expense of the said Robert L. Stevens. And the said Robert L. Stevens further contracts and agrees that the arrangements and equipments herein referred to shall comprise all the tools and implements necessary for the safe and proper working and management of the engines and their dependencies, all necessary copper powder-tanks, iron water-tanks, white oak water and spirit casks, boats, anchors, cables, hawsers, and warps, galley and its appendages, and guns, gun-carriages, and the equipments, as hereinbefore specified, for using them; furniture for the officers according to the present regulations of the Navy Department of the United States, and generally all articles which shall be necessary and proper for the safe and convenient management and use of the said war steamer in the harbor of New York from Sandy Hook upwards. The said Robert L. Stevens further contracts and agrees to furnish and put up on board the said war steamer all necessary fixtures for the convenient and safe use of the cables and anchors, and for carrying the boats, and to complete the internal arrangements for the proper accommodation of the officers and others who may be allotted to her as her compliment, and for the safe and advantageous stowage of the necessary fuel and provisions, water, powder, shot, and shells, and all other stores and supplies necessary and proper for the most advantageous use of the said war steamer, and for the persons to be employed in her as her allotted complement; and it is hereby further stipulated and agreed
89 that, if the cost of making any models or patterns used for or in the construction of the said war steamer, her engines, boilers, or their appendages, shall be included in any other bills presented and paid by the United States in the course of the work, or at its completion, all such models and patterns shall become the property of the United States, and shall be delivered to the agent thereof for safekeeping, or for such other disposition as the Navy Department of the United States may direct.

The said Robert L. Stevens further contracts and agrees to furnish and deliver on board the said war steamer, within the time herein specified for her completion and delivery, subject to inspection satisfactory to the Navy Department, five solid spherical shot for each gun not over ten inches calibre, and five spherical and fifteen cylindrical or oblong shells each gun of not less than 32-pounder calibre, which

may be put on board the said steamer by the said Stevens, which shot and shells shall be paid for by the United States separately from the said war steamer and her equipments, and in the manner herein provided for.

The said Robert L. Stevens and John Y. Mason, as Secretary of the Navy Department of the United States, do further stipulate and agree that the Secretary of the Navy shall appoint, and the said Stevens shall admit within his establishment for building said war steamer, some person or persons whose duty it shall be to attend to the works of the said Stevens, or where the said war steamer, engines, and machinery are to be built, and to receive and receipt for, on account of the Navy Department of the United States, all materials of every description which shall be delivered therein for constructing the said war steamer, her engines, boilers, and all their dependencies; which materials, when so received and receipted for, shall be distinctly marked with the letters U. S., and shall become the property of and belong to the United States; and it shall be the further duty of the said
90 person or persons so appointed to receive from the said Stevens accounts stating the cost of all the articles thus received, and the amount paid for all labor or salaries, excepting for the said Stevens, actually applied to and given to the construction of the said war steamer, her engines, boilers, and all their dependencies, which are included in this contract or that of which this is explanatory (shot and shells only excepted, which will be certified by the inspecting officers of ordnance), duly certified by the said Stevens to have been procured and used or to be used for those purposes; which accounts, when thus certified by the said Stevens, and further certified as to the actual receipt of articles and the performance of labor or attendance given, by the persons attending as the agent of the Navy Department of the United States, shall form the evidence on which the payments hereinafter provided for shall be authorized and made; and should the agent or agents of the United States refuse to certify to any bills which may be presented by the said Robert L. Stevens, the said agent shall assign his reasons therefor in writing, and the bills shall be referred to the Secretary of the Navy for his decision.

And it is further understood and agreed that the said Stevens' bills for labor and unwrought materials (already or hereafter to be rendered submitted for inspection) shall be certified for payment with the same percentage of addition as is customary and usual in the building yards and establishments at New York, a scale of such addition to be ascertained and reported to the Navy Department within thirty days after the date of this contract by the said Robert L. Stevens, subject to the approval of the Secretary of the Navy, which scale, when so approved, shall be endorsed upon and form part of this contract; and it is moreover understood and agreed that the authority of the said inspecting officer shall not be understood to extend to a right to judge of
91 the quality or fitness of the said materials, or of the workmanship of any part or parts of them, but merely as to the cost of the same, and of the labor actually applied as aforesaid, it being understood that the quality and fitness thereof, with other matters concerning the performance of the contract, are to be inspected and determined in the manner hereinafter provided for.

And it is further stipulated and agreed that before the final payment of the said war steamer shall be made, as hereinafter stipulated, a certificate shall be rendered to the Navy Department that in her construction, armament, and equipment, all the provisions of this contract, and

that of which this is explanatory, have been fully performed and completed by the said Stevens on his part, which certificate shall be given and signed by persons who shall be appointed to examine the said war steamer, and certify as above in the following manner, viz: One shall be named by the said Stevens and one by the Secretary of the Navy, and in case of disagreement those persons shall select a third, and the decision of a majority, duly signed by them, shall be conclusive on the subject. And it is hereby further stipulated and agreed that the said Robert L. Stevens, in lieu of other security for the faithful performance of this contract on his part, shall make to the United States a good and sufficient mortgage, which cannot in any way be affected by previous mortgages or by previous judgments against the said Stevens, on all the land, docks, wharves, ships, and all their appurtenances belonging to and embraced within the establishment at Hoboken, New Jersey, at which the said war steamer is to be constructed, with ample power to enter upon and sell the same in case of failure on the part of the said Stevens to fulfil his part of this contract and that of which this is explanatory, or so much thereof as shall be necessary to complete any deficiencies on the part of the said Stevens.

92 And the said John Y. Mason, as Secretary of the Navy, for and in behalf of the Navy Department of the United States, hereby contracts and agrees to pay to the said Robert L. Stevens, or to his heirs, executors, administrators or assigns, as the price of the said war steamer when fully completed and delivered at the navy-yard at Brooklyn, in conformity with the provisions of this contract, and that of which this is explanatory, the sum of $586,717.84, being the mean average cost of the steamers Missouri and Mississippi, as ascertained by examination of the returns now on file in the Navy Department. And it is further agreed that if it shall be made to appear to the satisfaction of the Secretary of the Navy on or before the 15th day of December, 1844, that any further amount beyond or above the before-named $586,717.84 ought to have been included in the actual average cost of the said steamers Missouri and Mississippi, then such additional amount shall be added to the before-mentioned sum of $586,717.84, and the sum shall be endorsed on and become part of this contract, as the price which is to be paid for the said war steamer when fully completed, delivered and accepted, all of which payments shall be made in manner and form following.

In consideration of the security hereinbefore expressed for the faithful performance of this contract by the said Stevens (and of the fact that compensation for his time and services must be wholly deferred until the final completing and delivery of the said war steamer), it is hereby agreed that payments shall be made in full, from time to time, by the navy agent at New York, upon bills for not less than $5,000 each, when duly certified by the said Stevens and the agent or agents of the United States, as hereinbefore expressed, and approved by the chief of the bureau of construction, equipment, and repairs of the Navy Department, or sanctioned by the Secretary of the Navy, within

93 fifteen days after such approval or sanction, until the sum of $500,000 shall have been paid. And it is hereby further stipulated and agreed that when the sum of $500,000 shall have been paid as aforesaid, an examination shall be had of the said war steamer, her engines, boilers, and dependencies, by persons to be appointed as hereinbefore agreed upon for the final examination of said war steamer, and if they, or a majority of them, shall certify their opinion that the said war steamer and all her equipments of every kind can be fully com-

pleted according to the terms and provisions of this contract, and the contract of which this is explanatory, for the remaining balance which may then be due, then further bills for the completion of the said war steamer shall continue to be paid in full, as hereinbefore specified, but not exceeding in the whole the aforesaid sum of $586,717.84, or the sum that may be determined upon and endorsed on this contract as the actual cost to be paid for the said steamer when accepted. And it is further stipulated and agreed that if the person before mentioned shall certify an opinion that the said war steamer cannot be fully completed in all respects according to the provisions of this contract, with the amount payable as therein provided, after the payment of $500,000 aforesaid, they shall certify the amount which, in their opinion, will be then further required beyond the sum then available to thus complete the said war steamer, and such deductions and reservations shall be made and withheld from all or any subsequent bills presented by said Stevens before payment by the navy agent as aforesaid, as in the opinion of the department will be sufficient to cover the probable excess of cost which shall be thus certified.

And it is further stipulated and agreed that such reservation, if any shall be made, shall be held or retained by the Secretary of the Navy of the United States as further security for the faithful perform-
94 ance of this contract, and that of which this is explanatory, on the part of said Stevens, and in addition to the security by mortgage hereinbefore provided to be given by the said Stevens.

And it is further stipulated and agreed that when the said Stevens shall have fully completed the said war steamer, with the engines, boilers, and their dependencies, her armament and equipment in all respects, and when she shall have been duly delivered to and received by the agent of the United States according to the terms of this contract, and that of which this is explanatory, there shall then be paid to said Stevens, by the navy agent at New York, any balance which shall be found to be due to the said Stevens to complete the aforesaid sum of $586,717.84, or the price which may be determined upon, as hereinbefore specified, as the total amount to be paid to the said Stevens for the said war steamer when fully completed and accepted, and the said Secretary of the Navy shall at the same time cancel and return to the said Stevens the mortgage deed hereinbefore specified to be given as security for the faithful performance of this contract on the part of the said Stevens.

And it is hereby further agreed that payments shall be made by the navy agent at New York, as hereinbefore specified, in full upon all bills which shall be presented to him for the shot and shells, which by this contract the said Stevens is bound to furnish and deliver in addition to the articles embraced in the outfits of the said war steamer, when duly certified to be of proper quality by the inspecting officer to be appointed to prove and test the same, and receipted for by the agent or agents of the Navy Department, and the said bills approved by the chief of the bureau of ordnance, and at the following prices, viz: For the solid shot, at the rate of five cents per pound; for the cylindrical or oblong shells, if for a 32-pounder gun, $19 each; if for a 42-
95 pounder gun, $20 each; if for 8-inch calibre, $29 each; if for 9-inch calibre, $36 each; if for 10-inch calibre, $50 each; and if for a greater calibre than ten inches, $50 each, and six cents per pound for the excess of weight beyond the weight of a shell for 10-inch calibre. The price to be paid for the spherical shall be the same as for the cylindrical or oblong shells of corresponding size or calibre, deducting six cents per pound for the difference in weight between the spherical and

cylindrical or oblong shells. All the shells to be fitted in all respects fully equal to, and with the same arrangements as, those formerly furnished by the said Robert L. Stevens under contract with the Navy and War Departments.

In testimony whereof the said parties have hereunto set their hands and affixed their seals the day and year herein first above mentioned.

J. Y. MASON, [L. S.]
Secretary of the Navy.
ROB. L. STEVENS. [L. S.]

Witness:
C. MORRIS.
W. JAMESON.

Agreement of the Secretary of the Navy with Robert L. Stevens, extending the period for building war steamer for four years from September 9, 1848.

Whereas a contract was entered into and made on the 14th day of November, 1844, between John Y. Mason, Secretary of the Navy of the United States, of the one part, and Robert L. Stevens, of the city of New York, of the second part, modifying the terms, stipulations, and agreements
96 of a previous contract made and entered into between the said Robert L. Stevens and Abel P. Upshur, then Secretary of the Navy, under which contract the said Stevens bound himself to construct and deliver into the possession of the War Department a war steamer, by which it was agreed on the part of the said John Y. Mason, Secretary as aforesaid, that in and for the consideration that the said Stevens would construct and deliver to the Navy Department, according to the modified stipulations and conditions as therein set forth, and give certain securities for the faithful execution of said contract on his part, as also therein set forth, the said Stevens should have the time within which to complete and deliver the said war steamer extended to the period of two years beyond the period stipulated in his said previous contract with the said Abel P. Upshur; and whereas the said Stevens is now anxious to obtain a still further extension of time, viz, the space of four years, for the completion and delivery of the said war steamer, which the said John Y. Mason is willing to grant:

Now, therefore, this agreement witnesseth that in and for the consideration that the said Robert L. Stevens will go on to construct and deliver to the said Navy Department of the United States a war steamer according to the specifications, terms, and agreement of the said contract made and entered into on the said 14th day of November, 1844, and will renew and give the same securities for the faithful discharge of said contract on his part, the said John Y. Mason, Secretary as aforesaid, does hereby grant the further extension of time for completing and delivering the said war steamer to four years from the date of these presents. And it is here understood and agreed that all the details for the building of said war steamer, the time and mode of making compensation for its construction, and all other particulars as set forth in said contract of the 14th day of November, 1844, as to
97 be done and performed by both the said parties, shall be held as still obligatory and binding upon them as fully and effectually, to all intents and purposes, as if the same were here repeated or more specially set forth, the extension of the time for completion of said war steamer being the only change or modification of the terms of that contract, as intended by these presents.

In testimony whereof the parties have hereunto set their hands and affixed their seals this 9th day of September, 1848.

JOHN Y. MASON, [L. S.]
Secretary of the Navy.
ROBERT L. STEVENS. [L. S.]

Signed, sealed, and delivered in the presence of—
CHAS. W. WELSH.

Bills paid on account of R. L. Stevens' war steamer.

First appropriation of $250,000:

Bill approved	January 5, 1845, for	$11,282	99
Do.	August 22, 1845	19,760	67
Do.	February 13, 1848	2,361	20
Do.	February 13, 1849	249	56
Do.	February 13, 1849	5,061	84
Do.	February 13, 1849	6,052	95
Do.	February 19, 1849	18,694	46
Do.	July 25, 1849	12,225	37
Do.	April 6, 1853	9,614	59
Do.	do.	12,954	08
Do.	March 3, 1854	8,258	03
Do.	do.	6,618	97
98 Do.	September 20, 1854	36,012	30
Do.	do.	38,511	81
Do.	October 18, 1854	58,876	88

Second appropriation of $250,000:

Bill approved	March 19, 1855, { $3,464 30 / 17,312 49 }	20,776	79
Do.	do.	68,920	82
Do.	April 11, 1855	12,131	81
Do.	May 22, 1855	15,448	36
Do.	July 17, 1855	50,603	43
Do.	August 30, 1855	45,943	45
Do.	September 13, 1855	32,533	00
Do.	December 14, 1855	7,106	64
		$500,000	00

EXHIBIT C 9.

Copy of Letter to M. de Lome.

(Copy.)

PARIS, *June* 24.

M. DUPUY DE LOME,
Directeur des Constructions, &c.:

SIR: As I am apprehensive, in our interview which took place yesterday, that we were enabled to give to you but imperfectly an explanation as to the amount required to complete the vessel, I take the liberty of writing this letter for the purpose of removing any uncertainty upon your mind as to this point, and also for the purpose of expressing some views in connection with the merits of the battery. Not

having the accounts with me I can only speak of the accounts from memory, but the sum advanced by the government was $500,000 in addition to the $228,000 advanced by my brother and myself,
99 making the total cost of the battery, up to that time, $728,000 or thereabouts. The appropriation of $730,000 prayed for in the memorial (of which you have a copy) therefore embraced this sum of $228,000, so that in reality but $512,000 were required to put the battery in fighting condition, making her total approximate cost $1,240,000 instead of $1,400,000.

I now offer this battery at its cost, with a deduction of $200,000; or, in other words, for the sum of $528,000. * * * * * *

I remain, with great respect,

(Signed) E. A. STEVENS.

P. S. I will guaranty the title to the battery against all claimants.

(Signed) E. A. STEVENS.

EXHIBIT C 10.

Statement made by General Geo. B. McClellan, engineer in charge, and Isaac Newton, assistant engineer, to W. W. Shippen and S. B. Dod, at the meeting in February, 1869, in relation to the course that ought to be pursued in completing the Stevens Battery, together with provisional estimates of the cost of executing the work.

The letters and contracts found among the archives establish the fact that the Stevens Battery was originally intended solely for defence of New York harbor, and to act only in smooth waters. The appended tables from Mr. Stevens' letter to the Navy Department, of December 22d, 1856, show the relations between the ship as it now stands and the vessel contemplated in the original contract of 1843.

100 "Recapitulations of dimensions and power:

"Contract of 1843.

"Length not less than 250 feet.
"Beam not less than 40 feet.
"Depth amidships, 28 feet.
"Protection against shot, 4½ inches.
"4 iron boilers.
"4 or more condensing engines.
"900 horse-power.
"Propeller and 1 line of shafting.
"2 accessory engines.

"Battery of 1856.

"415 feet length.
"48 feet beam.
"32 feet 4 inches depth.
"6¾ inches protection.
"10 iron boilers.
"8 condensing engines.
"8,624 horse-power.
"2 propellers and 2 lines of shafting.
"9 accessory engines.

"The above increase of dimensions was necessary for an increase of speed, to keep with the present improvements in vessels of war now afloat, so as to enable her to overtake quickly any vessel she might be in pursuit of. In addition to which the government requires an increase of strength in the protection to resist a shot of 125 pounds, instead of 64 pounds, as the contract called for when made in 1843; consequently, the weight of the hull and protection are necessarily increased to carry the same."

The result is a vessel too large for the original purpose, i. e., to operate solely in the harbor of New York and adjacent waters. In order, then, to render available this vessel & to meet the requirements of the present day, becomes necessary to make it fit to operate upon the ocean. The changes in artillery & marine engineering occurring between 1843 & 1856 are as nothing in comparison with those that have taken place between 1856 & 1869. * * * *

101 EXHIBIT C 2.

Will of Robert L. Stevens.

In the name of God, amen.

I, Robert L. Stevens, of the city of New York, being of sound and disposing mind and memory, do make and publish my last will and testament, as follows:

I direct my executors to pay my just debts, and to make provision for the payment of the yearly sum hereinafter particularly mentioned and provided for.

I give, devise, and bequeath the following legacies, bequests, gifts, and provisions to the persons hereinafter mentioned, to his, her, and their use and behoof forever, viz:

To the children of my brother James A. Stevens, living at the time of my death, to each the sum of ten thousand ($10,000) dollars, to be paid to each of the boys as they respectively attain the age of twenty-one years, and to the girls as they respectively attain eighteen years.

To the children of my sister, Juliana Conover, living at the time of my death, to each the sum of ten thousand ($10,000) dollars, to be paid to each of the boys as they respectively attain the age of twenty-one years, and to the girls as they respectively attain the age of eighteen years.

To my brother John E. Stevens, twenty thousand dollars.

To my brother James A. Stevens, twenty thousand dollars.

To my niece Mary, the daughter of my brother Edwin, my piano organ, and all the music and musical instruments which I may own at the time of my death.

To my friend Horace Binney, as a mark of my regard for his stern integrity, a piece of plate to be purchased by my executors and presented to him, to cost at least the sum of one thousand dollars.

To Capt. Ira Bliss, one thousand dollars.

To Cap. Isaac Fisher, of N. Brunswick, one thousand dollars.

102 To W. H. Gatzmer, one thousand dollars.

To Richard A. Shippen, one thousand dollars.

To Capt. Kester, of steamboat Trenton, one thousand dollars.

To Francis Kester, one thousand dollars.

To Philip Kipp, of Hoboken, one thousand dollars.

To John Walker, engineer, five hundred dollars.

To William Norcross (for his son Robert), one thousand dollars.

To Robert Hanson, of steamboat Trenton, five hundred dollars.

To my cousin Julia Stockton, one thousand dollars.

To Elijah, now the engineer of the iron steam tug New Jersey, five hundred dollars, as a remembrance of his long and faithful services in my employ.

I direct my executors to pay to the New York Life Insurance and Trust Company, in fulfillment of an obligation in writing, entered into by me to that effect, bearing even date herewith, the annual sum of three thousand dollars, in equal quarterly payments, to commence at the expiration of three months from my decease, and to continue quarterly, as aforesaid, during the natural life of Antoinette, the wife of Henry Otto, and no longer; which said yearly sum is to be held by the said The New York Life Insurance and Trust Company, upon the special trust and confidence to pay over the said yearly sum, when received, to the said Antoinette personally, or upon her receipt in writing, signed by her, to and for the sole and separate use of the said Antoinette, free from the debts or control of her present or any future husband.

I charge all my estate, real and personal, with the payment of the above debts, engagements, legacies, gifts, and bequests.

All the rest, residue, and remainder of my estate, real and personal, of which I may die seized or possessed, wheresoever the same may be, after satisfying and providing for the above provisions and charges, I give, devise, and bequeath unto my beloved brother Edwin A. Stevens, his heirs, executors, and administrators, forever, to have and to hold to his or their only use and benefit forever.

103 I hereby appoint my brothers, John E. Stevens and Edwin A. Stevens, and my friend, Mr. Horace Binney, junior, of Philadelphia, to be the executors of this my last will and testament, hereby revoking any former will by me made.

In witness whereof I have to this my last will and testament set my hand and seal, in the city of New York, this twentieth day of August, in the year one thousand eight hundred and forty-six.

ROB. L. STEVENS. [L. S.]

Subscribed, sealed, published, and declared by the said Robert L. Stevens as and for his last will and testament, in the presence of us and each of us, who in his and at his request, and in the presence of each other, have subscribed our names as witnesses hereto.

F. B. CUTTING, residing at No. 95 Chamber st., city of New York.

DENNING DUER, residing on Weehawken Heights, in the State of New Jersey.

IRA BLISS, residing at No. 8 Greenwich street, New York.

STATE OF NEW JERSEY,
Hudson County, ss:

I, James O'Neil, surrogate of the county of Hudson, do certify the foregoing to be a true copy of record.

Witness my hand and seal of office the eighth day of October, in the year of our Lord one thousand eight hundred and sixty-eight.

[L. S.] JAMES O'NEIL,
Surrogate.

104 *Resolutions of Congress.*

July 17, 1862. 12 Stat. at L., p. 628.

"A resolution releasing to the heirs at law of Robert L. Stevens, deceased, all the right, title, and interest of the United States in and to Stevens Battery:

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That all the right, title, and interest of the United States in and to Stevens Battery be, and the same are hereby, released and conveyed to the heirs at law of the said Robert L. Stevens, or their legal representatives."

Approved July 17, 1862.

United States Stats. at L., vol. 16, p. 383.

"A resolution giving the consent of Congress to the reception of a certain bequest by the State of New Jersey under the will of the late Edwin A. Stevens:

"Whereas Edwin A. Stevens, who was in his lifetime the owner of the ship known as the Stevens Battery, originally commenced under contract for the United States Government, and upon the building of which large sums of money were spent by his brother and himself, did, by his last will and testament (the United States having previously relinquished all claims to said ship), leave the same to be finished by his executors, at an expense not exceeding the sum of one million of dollars, and when finished to be offered to the State of New Jersey as a present, to be by her received and disposed of as the said State shall deem proper; and

"Whereas doubts have been suggested as to the right of the said State to accept the said bequest without the consent of Congress, under the prohibition of the tenth section of the first article of the Constitution of the United States: Therefore,

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the consent of Congress is hereby given that the State of New Jersey shall receive and dispose of the said ship according to the terms and conditions of said bequest."

Approved July 1, 1870.

105 *Resolutions of the New Jersey Legislature.*

RELATIVE TO THE STEVENS BATTERY.

Whereas by the last will and testament of the late Edwin A. Stevens, deceased, the vessel known as the Stevens Battery is, when finished, to be offered to the State of New Jersey, as a present, to be disposed of as the State shall deem proper; and whereas the executors of said will, in a communication addressed to the governor of this State, represent that they are now going on to complete the said vessel, and that they shall offer the same to the State of New Jersey as soon as it is finished, and suggesting that inasmuch as the details of completion should be, to some extent, varied, more perfectly to meet the requirements of such disposition of it "as the State may deem proper," the State shall appoint some person or persons to advise them as to the probable disposition of the ship, and as to the details of her completion; and where-

as the governor, by his message of the twenty-second of March, eighteen hundred and sixty-nine, has suggested that persons be appointed by the State authorized to concur and advise with the executors as to the mode of completing the battery and, with the concurrence of the executive department, enter upon such negotiations as to its ultimate disposition as they may deem proper, and the legislature may hereafter sanction: Therefore,

1. Be it resolved by the senate and general assembly of the State of New Jersey, That the State of New Jersey will accept the said vessel when the same shall be finished and offered to the State, pursuant to said will; and that the governor be, and he is hereby, authorized and empowered to appoint three suitable persons as commissioners, to hold their offices until the said battery shall be finished, and to fill any vacancy that may happen in such commission by death or otherwise.

106 2. And be it resolved, That the said commissioners, together with the governor, shall have power to determine by majority vote, of which majority the governor shall be one, to what use the said vessel shall be devoted, to inform the said executors of such determination, to advise with them as to the details of the completion of said vessel, and to negotiate for the final disposition of said vessel when finished and delivered to the State.

3. And be it resolved, That the governor and the said commissioners shall, annually, and oftener if required, report to the legislature their proceedings had under this resolution, and no contract or agreement for the sale or other final disposition of the ownership of said vessel shall be valid or effectual until reported to and ratified by the legislature.

4. And be it resolved, That these resolutions shall take effect immediately.

Approved April 1, 1869.

107 AUTHORIZING SALE OF THE STEVENS BATTERY.

Whereas the senate and general assembly of the State of New Jersey, by resolution approved the first day of April, anno Domini one thousand eight hundred and sixty-nine, did authorize the governor to appoint three commissioners to advise with the executors of the late Edwin A. Stevens, as to the interest of the State in the ship now building at Hoboken, known as the Stevens Battery, but without the authority to sell or dispose of the same; and whereas the governor, by virtue of the said resolution, did appoint such commissioners; and whereas the interest of the State requires that the said ship shall be sold for the largest sum that can be obtained, and that to effect this end it is necessary that authority should be given to negotiate such a sale to our own or to a foreign government: Therefore,

1. Be it resolved by the senate and general assembly of the State of New Jersey, That the said commissioners be, and they are hereby, authorized to sell and dispose of the interest of the State in said Stevens Battery for such a sum, and in such a manner as they, or a majority of them, may be willing to accept; provided that the governor and chief justice of New Jersey consent to such sale.

Approved March 21, 1871.

108 *Final decree.*

BETWEEN MARTHA B. STEVENS AND OTHERS, complainants,
and
WILLIAM W. SHIPPEN AND OTHERS, DEFENDANTS.

This cause coming on to be heard before the Honorable Theodore Runyon, chancellor, on the original bill of complaint exhibited in this cause between Martha B. Stevens and her children, John Stevens, Edwin Augustus Stevens, Robert L. Stevens, Julia Augusta Stevens, Caroline B. Stevens, Albert Stevens, and Richard Stevens, infants, by the said Martha B. Stevens, their next friend, complainants, and William W. Shippen and Samuel B. Dod, executors and trustees of Edwin A. Stevens, deceased, George M. Robeson, attorney-general of the State of New Jersey, and Mary P. Garnett, defendants, the answers of all the defendants thereto, and to which the complainants filed a replication, and on the bill and supplemental to the bill last aforesaid, exhibited by all the complainants in the original bill except Julia Augusta Stevens, who had departed this life since the filing of the said original bill, and against Theodore F. Randolph, governor of the State of New Jersey, Fitz John Porter, Benjamin G. Clarke, and William W. Shippen, commissioners, William W. Shippen and Samuel B. Dod, executors, Mary B. Lewis and Edward P. C. Lewis, her husband, and Robert Gilchrist, attorney-general, James A. Stevens, Sophia L. V. C. Stevens, Estha B. Stevens, Julia Anna Conover, Mary Sands, Matilda Brown and John G. Brown, her husband, Ann Clarkson and Robert L.
109 Clarkson, her husband, Harriet Wetmore and George W. Wetmore, her husband, Joshua Sands, John Sands, and Samuel Sands, defendants.

The information in the nature of a cross-bill by Robert Gilchrist, attorney-general of the State of New Jersey, against the parties to the supplemental bill, and Joel Parker, governor of the State of New Jersey, and the answers thereto and the proofs produced by the parties under the pleadings aforesaid.

And the matters aforesaid having been debated by I. W. Scudder, of counsel with the executors of Edwin A. Stevens, deceased, Walter L. Clarkson, of counsel with the heirs and next of kin of Robert L. Stevens, deceased, and Joel Parker, of counsel with the State of New Jersey.

And it appearing to the chancellor that the questions presented for the consideration of the court under the pleadings and proofs are—

First. Whether under the resolution of Congress, approved by the President July 17, 1862, which by its terms released and conveyed the unfinished vessel known as the Stevens Battery to the "heirs at law of Robert L. Stevens, deceased, or their legal representatives," the title to that vessel passed to those heirs at law or their legal representatives, or to Edwin A. Stevens as his residuary legatee.

Second. If the title to said battery passed to Edwin A. Stevens as such residuary legatee, whether the gift of that vessel to the State of New Jersey in and by the codicil to the will of Edwin A. Stevens was absolute or conditional.

Third. Whether the charitable devises and bequests are valid, and have thus far been properly administered, said charitable devises and bequests relating to the two school-house lots situated in Garden street,

Hoboken, the school-houses thereon, and the furniture and property of the Hoboken Land and Improvement Company, referred
110 to, given to trustees for the use of the city authorities of Hoboken, or other authorities, for school purposes. And also the gift of the block of land in Hoboken bounded by Hudson street, River street, and Fifth and Sixth streets, and the direction to maintain thereon an institution of learning, for the support of which provision by said codicil was made.

Fourth. And whether the birth of Richard Stevens, a child of the testator, after the making of the said codicil, was a revocation of the devise of Castle Point and the homestead property, and the direction to divide the same into four convenient plots, and the disposition of said property, as in said codicil is set forth. And it appearing to the chancellor that Robert L. Stevens died in the year eighteen hundred and fifty-six, and that by his last will and testament he gave to his brother Edwin A. Stevens all the rest, residue, and remainder of his estate, real and personal, of which he might die seized or possessed, wherever the same might be, that on and prior to the seventeenth day of July, eighteen hundred and sixty-two, the said Edwin A. Stevens was in possession of the said vessel called the Stevens Battery, claiming the title and interest of Robert L. Stevens therein. And it appearing that the Congress of the United States passed a joint resolution by which it was determined "that all the right, title, and interest of the United States in and to the Stevens Battery be, and the same are hereby, released and conveyed to the heirs at law of the said Robert L. Stevens or their legal representatives." And it appearing that after the passage of the said resolution, the said vessel remained in the possession of Edwin A. Stevens, and that prior to his death he expended large sums of money thereon, and that none of the heirs at law of Robert L. Stevens or their legal representatives objected to such possession or expenditure.

111 On this thirty-first day of December, eighteen hundred and seventy-seven, the chancellor is of the opinion and doth declare that, by the true construction of the said joint resolution, the right and interest of the United States in the said vessel passed to the said Edwin A. Stevens as residuary legatee of Robert L. Stevens; and that the said Edwin A. Stevens, so owning and possessing the said battery up to the time of his death, the said vessel passed under the last will and testament, and codicil thereto, of the said Edwin A. Stevens.

And it further appearing to the chancellor that the executors of Edwin A. Stevens, deceased, allege that they have out of the residue of his estate applied the sum of $885,943.39 to finish on the general plans of the said testator, as nearly as may be in the discretion of the said executors, the said Stevens Battery, and that after the application of the sum last aforesaid, for the purpose aforesaid, it was ascertained by the said executors that the said battery could not be finished on the general plans of the testator for the said sum of one million of dollars, but that the finishing of the said vessel on said general plans would cost $450,229 over and above the said one million of dollars. And it further appearing to the chancellor, by the proof in the case, that the said executors, in the effort to finish the battery according to the testator's directions, have expended the said sum of $885,943.39.

And it further appearing that it is claimed by the said supplemental bill that the bequest of said battery to the State of New Jersey was conditional and contingent, and that the condition upon which the said executors could offer the said vessel to the State, and the State could receive the same, was when it should be finished by said executors at

a cost not exceeding one million dollars, and that inasmuch as the said vessel could not be finished for one million of dollars, no title thereto has passed to the State. The chancellor doth declare that the
112 said bequest to the State is absolute and not conditional, and that the title to the Stevens Battery aforesaid has vested in the State of New Jersey.

And the chancellor doth declare that the devise, bequest, and directions in said codicil to the executors of Edwin A. Stevens to purchase of the Hoboken Land and Improvement Company, and to cause to be conveyed to his wife, Martha B. Stevens, William W. Shippen, and Samuel B. Dod, and to their heirs and assigns, as joint tenants and not as tenants in common, the two school-house lots situate in Garden street, and the school-houses thereon, and all the furniture and property of said company on said lots or in said school-houses, and all the right of the said Edwin A. Stevens in said lots, houses, and property on the trusts relating thereto, as in the said codicil is fully set forth, are valid in law.

And it appearing that the said executors have purchased of the Hoboken Land and Improvement Company the said two school-house lots, and all the school-houses thereon, and all the said furniture and property, by deed, dated Jan. 1st, 1869, and have taken the title thereto on the trusts in said codicil set forth, the chancellor doth declare that such deed on such trusts is valid in law.

And the chancellor doth declare that the devise and bequest of the block of land in Hoboken, bounded by Hudson street, River street, and Fifth and Sixth streets, and of the $150,000 in the stocks and bonds of the Morris & Essex Railroad Company, as in said codicil set forth, the erection of a building for the uses of an institution of learning and the directions for establishing such institution, and the trusts touching said devise and bequests in said codicil set forth, are valid in law, and will be recognized by this court. And it appearing to the chancellor that the said trustees have erected of substantial and economical material, being trap-rock, a plain building, suitable for the uses of an
113 institution of learning, on the said block of ground, and have established rules and regulations, and have employed officers, tutors, and servants for the conduct and management of said institution; that the said trustees have used and applied for said purpose $75,000 of the stock of the Morris & Essex Railroad Company, and $75,000 of the bonds of said company at the par value of said stock and bonds, and that the said trustees have set apart and invested, for the purpose of maintaining the said institution, personal estate and property to the amount of $500,000; all of which, when set apart, was property productive of an annual revenue. And it further appearing that the legislature of the State of New Jersey has passed an act entitled "An act to incorporate the Stevens Institute of Technology," which was approved Feb. 15, 1870, under which act the said trustees have become incorporated with power of perpetual succession, and that it was by said act declared that the entire management of the affairs and concerns of said corporation should be and were thereby vested in the said trustees, to manage and control the same as in said codicil provided. And it also appearing that the said trustees have designated that the principal branches of learning which shall be taught in said institution are those relating to mechanical engineering. And it further appearing that the said trustees, in fixing the rates of tuition at said institution, have established one-half of the usual rates in similar institutions for pupils residing in the State of New Jersey,

and full rates for such as reside out of the State, and have received in said institution pupils who when received did not reside in the State of New Jersey. And it appearing that, in receiving pupils who reside out of the State of New Jersey, the institution has not been placed in such situation as not to afford full accommodation to pupils in the State.

114 The chancellor doth declare that it is the true intent and meaning of the said trust that the said institution should be managed for the benefit, tuition, and advancement in learning of the youth residing from time to time in the State of New Jersey, and equity would restrain the admission of pupils who do not reside in the State of New Jersey if their admission would in any way deprive pupils resident in this State, or persons resident in this State, entitled to and desirous of being pupils of the advantages secured by said trust.

And it appearing to the chancellor that the admission of pupils, as aforesaid, residing out of the State of New Jersey has not in any way deprived persons residing in this State, or persons residing here and entitled to and desirous of being pupils, of the benefits of said institution and of said trusts, and that the rule to admit non-resident pupils is not designed to be permanent, such administration of said trust touching said pupils residing out of the State of New Jersey is not disapproved.

The chancellor doth further declare that the administration of the said trust, subject as aforesaid to the rights of pupils residing in the State of New Jersey, and persons residing here entitled to and desirous of being pupils, has been lawful and proper, and in conformity with the true intent and meaning of said trusts in said codicil set forth. And the chancellor doth further declare that the birth of Richard Stevens, one of the sons of Edwin A. Stevens, the testator, after the execution of the said codicil, does not revoke the said codicil in that part of the same wherein the testator directs his executors to divide Castle Point and the homestead lot and the houses there into four convenient plots, and that his wife shall determine which one of his sons shall have the plot on which his mansion-house stands, and that the other three plots shall be set off by his executors to each of his three sons in the manner in said codicil set forth, it appearing to the

115 chancellor that, although at the time of the execution of the said codicil the testator had only four sons—John, Edwin, Robert, and Albert Bayard—but that by said codicil the testator made provision for after-born children, the chancellor doth therefore declare that, by reason of such provision, which was for the benefit of said Richard, the said four sons—John, Edwin, Robert, and Albert Bayard—are entitled to such direction and devise in relation to Castle Point, the homestead lot, and the houses thereon, as set forth in said codicil, and that the same have not been revoked by the birth of said Richard.

THEODORE RUNYON, *C.*

A true copy.

H. S. LITTLE, *Clerk.*

116 *Petition of appeal.*

New Jersey court of errors and appeals.

BETWEEN MARY L. SANDS, ANNA A. CLARKSON and Robert L. Clarkson, her husband, Harriet Wetmore and George W. Wetmore, her husband, Samuel Sands, Joshua Sands, and John S. Sands, appellants,
and
THE ATTORNEY-GENERAL AND MARTHA B. Stevens, and others, appellees.
} On bill, &c.

To the honorable the court of errors and appeals:

The humble petition of Mary S. Sands, Anna A. Clarkson and Robert L. Clarkson, her husband, Harriet Wetmore and George W. Wetmore, her husband, Samuel Sands, Joshua Sands, and John S. Sands, the appellants in the above-stated cause, respectfully show that your petitioners find themselves aggrieved by a final decree, made in the court of chancery by his honor Theodore Runyon, chancellor of New Jersey, bearing date 31st December, A. D. 1877, wherein Martha B. Stevens et al., were complainants, and wherein Robert Gilchrist, attorney-general of the State of New Jersey, was complainant in an information exhibited in behalf of said State, and Martha B. Stevens and your petitioners and others were defendants in this respect, to wit, that said decree declares "that by the true construction of the said joint resolution the right and interest of the United States in the said vessel passed to the said Edwin A. Stevens as residuary legatee of Robert L.
117 Stevens," and from so much as declares that said appellants and the other heirs at law of Robert L. Stevens acquiesced in the possession of said vessel by Edwin A. Stevens, and lost their rights therein by negligence and want of protest. And your petitioners humbly appeal from that part of said decree of the chancellor which decrees as aforesaid, on the ground that the same is erroneous, and that the chancellor should have decreed that your petitioners were embraced and included in the term "the heirs at law of the said Robert L. Stevens or their legal representatives," of the act of Congress of July 17th, 1862, and were entitled to all the right, title, and interest given to them by the same, and that they have not lost their right and title to the Stevens Battery by their negligence and want of protest. Your petitioners therefore pray that the said final decree of the said chancellor may be in the particulars aforesaid reversed, set aside, and for nothing holden. And that your petitioners may have such relief in the premises as to this honorable court shall seem meet.

Dated Feb. 18th, 1878.

WILLIAMSON & MAN,
Sol'rs of Appellants.
B. WILLIAMSON,
WALTER L. CLARKSON,
Of Counsel with Appellants.

118 New Jersey court of errors and appeals, June term, 1878.

BETWEEN MARY L. SANDS & ALS., APPELlants,
and
MARTHA B. STEVENS & ALS., RESPONDENTS.

This cause having been brought to a hearing, on an appeal from the

court of chancery at the June term of this court, and Benjamin Williamson and Walter L. Clarkson, of counsel with the appellants, and Joel Parker, of counsel with the respondents, the State of New Jersey, having been heard, and the questions brought up by said appeal having been duly considered, it is, on this twenty-second day of July, eighteen hundred and seventy-eight, ordered, adjudged, and decreed that so much of the decree of the court of chancery made on the thirty-first day of December, eighteen hundred and seventy-seven, which is appealed from by the said appellants, be, and the same is hereby, in all things affirmed, with costs of appeal to be paid by the appellants, and that the petition of appeal be dismissed. And it is further ordered that the record be remanded to the court of chancery to proceed further thereon according to law and the practice of said court.

119 In chancery of New Jersey.

BETWEEN MARTHA B. STEVENS & AL., compl'ts, *and* WILLIAM W. SHIPPEN & AL., DEF'TS. } On bill, &c.

It appearing to the court by the affidavit of James P. Albright that a certified copy of an order of this court, dated on the ninth day of June instant ordering that Mary Sands, one of the defendants herein, show cause why she should not be severed in the appellate proceedings about to be prosecuted in the Supreme Court of the United States, and therein described, was duly served upon the said Mary Sands personally on the sixteenth day of June instant, and she not appearing and showing cause as aforesaid as by said order directed, on motion of Walter L. Clarkson, of counsel with Anna Clarkson and Robert L. Clarkson, her husband, Harriet Wetmore and George W. Wetmore, her husband, Samuel Sands, Joshua Sands, and John Sands, the appellants in the court of errors and appeals in the last resort in this State.

It is, on this twenty-third day of June, in the year of our Lord one thousand eight hundred and seventy-nine, ordered that the said
120 Mary Sands be severed in said appellate proceedings, and that the said appellants be at liberty to prosecute their writ of error to the Supreme Court of the United States without joining her therein as a party thereto.

THEODORE RUNYON, *C.*

Respectfully advised.

A. V. VAN FLEET, *V. C.*

121 *Opinion of chancellor on final hearing, October term*, 1877.

MARTHA B. STEVENS *vs.* WILLIAM W. SHIPPEN AND OTHERS. }

On original and supplemental bills and cross-information, and answers and proofs.

Mr. I. W. Scudder, for executors of Edwin A. Stevens, deceased.

Mr. Walter L. Clarkson, of New York, for the heirs of Robert L. Stevens, deceased.

Mr. Joel Parker, for the State.

The CHANCELLOR:

The questions presented for consideration on the hearing were, whether

under the resolution of Congress approved by the President July 17, 1862, which by its terms released and conveyed the unfinished vessel known as the Stevens Battery to the "heirs at law of Robert L. Stevens, deceased, or their legal representatives," the title to that vessel passed to those heirs at law, or their legal representatives,
122 or to Edwin A. Stevens as his residuary legatee, and if the title passed to Edwin A. Stevens as such legatee, whether the gift of that vessel to the State of New Jersey in and by the codicil to his will was absolute or conditional, and the questions whether the charitable gifts in the codicil are valid, and whether the birth of a child of the testator after the making of the codicil was a revocation of the devise of Castle Point and the testator's homestead property therein.

Edwin A. Stevens died in August, 1868. He left a will and a codicil thereto. The former is dated August 5, 1865, and the latter April 15, 1867. By the will he gave all his property, after the payment of his debts and funeral expenses, to his wife and the children which he then had, John, Edwin, Robert, Mary, Julia, and Carolina. By the codicil he gives to his son Albert $100,000, to put him on an equality with the rest of the testator's children, to each of whom he had, by the will, given the like sum. He adds that it is his will that every child he should thereafter have should also be upon a like equality with the children which he had at that time, and that each child that might thereafter be born should be entitled to a like sum out of his estate. He gives to his wife, for life, his residence known as Castle Point, and the homestead lot, and the houses thereon. He then directs his executors to divide Castle Point, and the homestead lot, and the houses thereon, into four convenient lots, not necessarily of equal value, and directs that his wife shall determine which one of his sons shall have the plot on which the mansion-house stands; and directs that the executors set off the other three plots to his other three sons; and adds that the estate of his sons, in their respective plots, shall be a fee simple. He then directs his executors to purchase of the Hoboken Land and Improvement Company, and caused to be conveyed to his wife, Martha B. Stevens, William W. Shippen, and Samuel B. Dod, and to their heirs and
123 assigns forever, to hold as joint tenants, and not as tenants in common, in trust, two school-house lots in Garden street, Hoboken, owned by him, as they were, then fenced in, and the school-houses thereon, and all the furniture and property of that company on those lots or in those schoolhouses, and gives to them, to be held in like manner, all his own right, title, and interest in those lots, houses, and property. The trust declared is to permit the city authorities of Hoboken (or such other authorities as shall at any time have the legal power over the common schools in the boundaries of that city as those boundaries then were, and which were then possessed by the city authorities of Hoboken), to use and occupy the property for the purposes to which they had been theretofore devoted, viz, to no other use or purpose than the furnishing there a free, plain, and practical English education to such of the children resident within those boundaries from time to time as said authorities shall permit to go there for said purposes. He further gives to his wife and Messrs. Shippen and Dod, and to their heirs and assigns forever, to hold as joint tenants, and not as tenants in common, in trust as thereinafter declared, a block of land in Hoboken (excepting such interest therein, if any, as he might not own at the time of his death), and $150,000 in stock and railroad bonds in trust, to erect, out of the proceeds of the personal property, upon that land, within two years after his death, a building

or buildings suitable for the uses of an institution of learning, which he directs his acting trustee or trustees for the time being to establish there; they to employ, pay, and discharge at discretion the officers, tutors, and servants thereof, and forever to manage and control it at his, her, or their discretion, but for the benefit, tuition, and advancement in learning of youth residing from time to time thereafter within this State; the acting trustee or trustees for the time being, however, to decide from time to time who of said youth shall re-
124 ceive the benefit thereof, and to direct the tuition in the institution, and to make all proper by-laws, rules, and regulations for the management of the officers, tutors, servants, and scholars connected with the institution; the tuition, however, is not be wholly free, except to such youth as the acting trustee or trustees shall direct, and on the other hand, the cost of tuition of any youth is not to be wholly paid by him or her, the proportion of payment of each youth being left to the discretion of the acting trustee or trustees. He also gives to the trustees such sum of money, not exceeding $500,000, as they in their discretion may think necessary, to be invested and appropriated for the perpetual maintenance of the institution. The testator empowered his executors, out of the residue of his estate (excluding Castle Point and the homestead lot and houses thereon) remaining after payment of his debts, the sum of $800,000 in legacies, and the appropriation of so much thereof as is necessary for the charitable bequests and devices, to apply not exceeding the sum of $1,000,000 to finish on his general plans as nearly as may be, in the discretion of his executors, the battery known as the Stevens Battery; and for the accomplishment of that object he gave to them the use of the dock and yards and basin theretofore appropriated to the battery, and all the materials provided for it. He further directed as follows: "When said battery shall be finished, I direct my executors of offer the same to the State of New Jersey as a present, to be disposed of as the said State shall deem proper; and if not accepted by the said State, I direct my executors to sell the same, and the proceeds thereof shall fall into the residue of my estate."

The testator subsequently gives the rest and residue of his estate, both real and personal, whatsoever and wherever the same may be, subject to the devises and bequests in the codicil, and of course except-
125 ing Castle Point and the homestead lot and the houses thereon, to his wife and children, born and to be born; each of his sons to have two shares, his wife two shares, and each of his daughters one share. The testator's son Richard was born after the making of the codicil. The executors are Mrs. Stevens and Messrs. Shippen and Dod. The original bill was filed by Mrs. Stevens on the 23d of December, 1868, against Messrs. Shippen and Dod, her coexecutors, and the attorney-general of this State and Mary P. Garnett, a daughter of the testator, as one of the residuary legatees and heirs at law of the testator. It was designed to raise the question as to the validity of the gifts for charitable purposes, and of the gift of the battery. One of the objections raised by that bill to the latter was based on the provision of the Constitution of the United States that no State shall, without the consent of Congress, keep ships of war in time of peace. The defendants answered the bill, and replication was filed April 21, 1869. Subsequently Congress, by resolution of July 1, 1870, consented that the State receive and dispose of the battery. On the 11th of September, 1871, Mrs. Stevens and her children filed a supplemental bill against the governor of the State, the commissioners of the State ap-

pointed in reference to a sale of the battery, the attorney-general, and Mrs. Lewis, formerly Mrs. Garnett. It stated the death of one of the complainants in the original bill since the filing thereof, and that Richard Stevens, one of the complainants, the youngest son of the testator, was born after the making of the codicil. It alleged as an additional objection to the gift of the battery the impossibility of finishing the vessel according to the testator's plans for the sum of $1,000,000. It presented for adjudication by the court the additional questions, whether the birth of issue after the making of the codicil, although such issue was provided for thereby, was a revocation; how Castle Point
126 and the homestead lots should be divided; whether the executors had duly executed their trust in reference to the Stevens Institute, and what the executors should do with the school-houses, and how they should execute the trust as to them. On the 5th day of January, 1872, the defendant executors, Messrs. Shippen and Dod, answered, admitting the impossibility of completing the vessel according to the testator's plans, with the amount appropriated for the purpose by the codicil. The attorney-general answered, setting up the resolution of Congress authorizing the State to receive and dispose of the battery, and insisting on the right of the State to the vessel. On the 12th of April, 1872, the supplemental bill was amended by making the heirs at law of Robert L. Stevens, deceased, other than the children of Edwin A. Stevens, parties, in view of the fact that they might claim title to the battery under the resolution of Congress approved by the President July 17th, 1862, above mentioned, by which all the right, title, and interest of the United States to the vessel was released and conveyed to the "heirs at law of Robert L. Stevens or their legal representatives." Subsequently the attorney-general filed a cross-bill on information, praying that the executors might be required to offer the battery to the State in such condition and stage of or towards completion as this court might deem equitable and just, or that they might be required to finish it out of the moneys appropriated by the codicil, or, if those moneys were not sufficient, then to finish it out of their own money; that the court would declare that the bequest was not on a contingency, and that the last-mentioned resolution of Congress conveyed no title to the heirs at law of Robert L. Stevens, deceased, or their legal representatives. The defendants having answered the information, the cause now comes on for hearing upon the pleadings and the proofs, all of which were taken before the filing of the information.

127 To consider first the questions raised in regard to the bequest of the battery, Robert L. Stevens contracted with the United States Government in 1843, to construct, on his own plan, a shot and shell-proof war steamer for harbor defence at the price of about $585,000. He proceeded with the work, and while it was in progress died. His death occurred in 1856. In 1849 the United States Government, which had advanced $500,000 of the price, refused to make any further payment, and the work was therefore suspended; but it was again resumed in 1853, and was continued up to or near the time of Robert L. Stevens' death. At the time of his death he had expended upon the vessel, which was then far from completion, over $113,000 of his own money besides the amount, $500,000, received from the United States Government. By his will, which was dated in 1846, he made his brother Edwin A. Stevens his residuary legatee. The latter and John C. Stevens were his executors, and duly proved the will. Edwin A. Stevens, however, took principal charge of the administration of the estate. It is

not disputed that if the vessel was part of the estate of Robert L. Stevens, it passed to Edwin A. Stevens as his residuary legatee. The latter, after Robert L. Stevens' death, being desirous of carrying out the project of his brother, continued the work on the battery, and expended about $100,000 of his own money thereon. In 1861 he solicited the United States Government to complete the vessel. A board of examiners was appointed on the part of the government to report on the subject, and they, in December, 1861, reported adversely to any further expenditures by the government upon the vessel. The following resolution was subsequently passed by Congress, and was approved by the President of the United States on the 17th of July, 1862:

"A resolution releasing to the heirs at law of Robert L. Stevens, deceased, all the right, title, and interest of the United States in and to the Stevens Battery.

128 "Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That all the right, title, and interest of the United States in and to the Stevens Battery be, and the same are hereby, released and conveyed to the heirs at law of the said Robert L. Stevens or their legal representatives."

After the passage of that resolution the work on the vessel was suspended until after the death of Edwin A. Stevens, when, under the directions of the codicil to his will, his executors proceeded with the work with a view to its completion according to his plans, and they had expended of his estate upon it up to December, 1870, nearly $900,000. Finding then that a further sum of from $400,000 to $500,000 (from $300,000 to $400,000 more than the sum they were authorized to expend for the purpose) would be necessary to complete the battery, they thereupon stopped the work, and have never since resumed it. The fact that Edwin A. Stevens claimed to be the owner of the battery in his lifetime was a matter of public notoriety, as was also the fact that by his will he had disposed of it as his property. And yet it does not appear that any adverse claim to it was at any time made by or in behalf of or under any of the heirs at law or next of kin of Robert L. Stevens until it was set up in this suit by answer in April, 1872. The heirs at law who now claim it adversely have stood by and, without even so much as a protest as far as appears, seen Edwin A. Stevens expend upon it in his lifetime prior to the passage of the above-mentioned resolution of Congress releasing the interest of the United States, about $100,000 of his own money. They have, in like manner, not only done the same thing since then, witnessing, without claim or protest, the expenditure of nearly a million of dollars by his executors, out of his estate, in pursuance of his testamentary direction, which was based on his claim of ownership and consequent right to dispose of the vessel. It is urged in

129 their behalf that some of them were under disability, and therefore are not estopped by acquiescence, and further that the heirs at law or next of kin had in fact no claim whatever to the battery until after the approval of the resolution of Congress (July 17, 1862) by which the right, title, and interest of the United States in it was conveyed and released. I do not deem it necessary to consider whether the doctrine of estoppel may be applied in this case. The title to the vessel up to the time of the approval of the resolution just referred to was in the United States, and Edwin A. Stevens had, up to that time, acquired no legal title to it under the will of his brother. Under the explanatory agreement, dated November 14, 1844, between the United States and Robert L. Stevens, for the construction of the vessel, it was provided

that all the materials furnished for the vessel, its engines, boilers, and all their dependencies should be inspected, received, and receipted for by an agent appointed by the Secretary of the Navy on the part of the United States, and that when so received and receipted for they should be distinctly marked with the letters U. S., and should become the property of and belong to the United States, and that payment on account of the contract price should be made on the certificate of that agent as to the cost of the materials and labor. Under this arrangement the vessel, when completed, and in whatever state before then, was the property of the United States. (Scudder *v.* Calais Steamboat Co., 1 Cliff, 370, 378.) Though the United States Government does not appear to have asserted any claim to it, but rather to have regarded the enterprise as an entire failure, it does not on the other hand appear that there was at any time a necessity or occasion for such assertion. Robert L. Stevens had, as has been before stated, expended a large amount of his own money upon the vessel. There could be no question as to his entire good faith in all his connection with the enterprise. He was actuated solely by a desire to embody and illustrate his own ideas of naval architecture for the purposes of warfare. Not only was all that was received from the government faithfully expended, but he did not spare his private funds. He had given security for the performance of his contract. The vessel was in his possession up to the time of his death, and after that in the possession of Edwin A. Stevens as his residuary legatee. Robert L. Stevens, in his lifetime, and his brother after his death, as his residuary legatee, had an equitable interest (using the term interest not in a technical but in the popular sense) in the vessel. If the vessel had been finished, and had proved to be the impregnable movable fortress which they appear to have believed she would be, or even a success, they had reason to expect from the bounty, not to say justice, of the government at least repayment of the private funds expended in its construction.

130

It is evident from the language of the resolution that Congress intended only a relinquishment of the title of the government to the property for the benefit, and it will be presumed to have been intended in augmentation of the estate of Robert L. Stevens. The language is "the heirs at law of the said Robert L. Stevens, or their legal representatives." There appears to have been no reason why the government should make the heirs at law, rather than the next of kin or residuary legatee, of Robert L. Stevens the recipients of its bounty. In Stevens *v.* Bagwell, 15 Ves., 139, 152, a warrant of the British treasury ordering payment of prize money to the "representatives" of a deceased lieutenant of the British navy was construed to entitle his residuary legatees to it. Said the court: "The captured effects being condemned to the crown, no right to any part of the produce can accrue to any one except by the gift of the crown, and as Lieutenant Stevens died before any gift was made, his will could have no direct operation upon the subject of that gift. But the intention of the crown in all cases of this kind, is to put what is in strictness matter of bounty upon the footing of matter of right. * * * In such cases the crown never means to exercise any kind of judgment or selection with regard to the persons to be ultimately benefited by the gift. The representatives to whom the crown gives are those who legally sustain that character, but the gift is made in augmentation of the estate, not by way of personal bounty to them. They take subject to the same trusts upon which they would have taken wages or prize money to which the party from whom they claim might have been legally entitled. The representatives

131

of Lieutenant Stevens were therefore entitled to receive this money, but upon the same trusts as they would take his general estate, and this is to be considered as if it had been actually a part of his property at the time of his death." The preamble of the subsequent resolution of Congress consenting that this State accept the vessel, is some evidence of the intention of that body in the former resolution. It recites that Edwin A. Stevens was in his lifetime the owner of the battery, and that upon the building thereof large sums of money had been spent by him and his brother, and that he had by his last will and testament (the United States having previously relinquished all claim to the ship) left it to be finished by his executors, &c., "and when finished to be offered to the State of New Jersey as a present," &c. Congress did not intend by the resolution of 1862, a grant to the heirs at law of Robert L. Stevens or their legal representatives for their benefit, but merely designed to effect a relinquishment of the interest of the United States in the vessel to those who were entitled to the estate which Robert L. Stevens owned at the time of his death, and the heirs at law or their legal representatives will be held to have received title to it in trust for the residuary legatee, to whom, as part of his per-
132 sonal estate, it would have gone had he had the legal title to it at the time of his decease. Edwin A. Stevens then, at the time of his death, had complete title to and ownership of the battery.

The next question to be considered is as to the character of his bequest thereof in favor of the State. By the codicil the executors are empowered to apply not exceeding $1,000,000 to finish the battery on the testator's general plans, as nearly as may be in their discretion, and for this purpose he gives them the use of the dock and yards and basin theretofore appropriated to its use, and all the material provided for the vessel. The testator adds, "When said battery shall be finished, I direct my executors to offer the same to the State of New Jersey as a present, to be disposed of as the said State shall deem proper, and if not accepted by the said State, I direct my executors to sell the same, and the proceeds thereof shall fall into the residue of my estate."

The battery is only to fall into the residue of his estate in case the State will not accept it. No provision is made in reference to it in any other contingency whatever. The contingency of the inability of the executors to complete the vessel on or nearly on the testator's general plan, was not contemplated by him. The gift is to the State, and the direction given to the executors as to the expenditure to be made upon it has reference solely to the condition in which he desired the vessel to be when offered as a present to the State. The direction is, to finish the vessel and then to offer it to the State as a present, to be disposed of as the State shall deem proper.

The bequest is in effect a gift to the State, of the vessel and of the sum of money, not to exceed $1,000,000, which may be necessary to complete it according to his general plans, or nearly so; with provision that the work of completion shall be done, and therefore the requisite expenditure of money be made by his executors, who are to exercise a certain discretion as to the amount, kind, and
133 character of work to be done (so always, however, that it be in accordance with his general plans, or nearly so), and as to the expenditure of the money requisite for the purpose. The legacy of the battery to the State is a vested legacy. There is no gift to the executors, but merely a direction to them to finish the vessel in a certain way, and to offer when finished for acceptance, as a present from him to the State, to be disposed of as the latter shall see fit.

The gift to the State is an absolue gift in presenti, and though the delivery is to be in futuro, it is no wise conditional. It is as if a man who was building a carriage, which at his death was not completed, should direct his executors to finish it, and give it when finished to a designated person. The title to the carriage would pass to such person, without reference to the executor's ability to finish it. The direction to offer the battery to the State as a present, is a bequest of the vessel to the State. Where a testator expressed in his will his desire that his executors should give to another a specified sum of money without prescribing any time of payment, it was held a good bequest (Brest *v.* Affley, 1 Ch. Rep., 246). And where a testator gave to his wife, among other things, his goods and furniture in his house at the time of his death, and "desired" her at or before her death to give the same to and among such of his own relations as she should think most deserving and approve of, and she died without making such disposition of them, it was held that she took only a life estate in the chattels, and that she having died without having disposed of them as directed by the will, they went to her husband's relations, and they were ordered to be divided among his next of kin (Harding *v.* Glyn, 1 Atk., 469). By the terms of the gift the battery is to be at the disposal of the State. The gift, therefore, is invested and absolute (1 Roper on Legacies, 642). My conclusion is that the title of the State to the vessel is valid and unconditional. * * *

134 *Opinion of court of errors & appeals.*

1. In case of an executory contract to build a vessel, to be paid for in installments as the work progresses, the title remains in the builder until the work is completed, and the rule is the same where the vessel is built under the inspection of a superintendent appointed by the purchaser.

2. The title to the vessel known as the Stevens Battery (under the contract between Robert L. Stevens and the United States Government) was vested in Robert L. Stevens at the time of his death, and, under his will, passed to Edwin A. Stevens, his residuary legatee.

On appeal from decree of the chancellor, reported in Stevens *v.* Shippen, 1 Stew., 487.

VAN SYCKEL, *J.*

The facts of this case are fully stated in the opinion of the chancellor, reported in 1 Stev., 487. The only question raised on this appeal is whether, under the resolution of Congress approved by the President July 17th, 1862, which, by its terms, released and conveyed the unfinished vessel known as the Stevens Battery to the "heirs at law of Robert L. Stevens, deceased, or their legal representatives," the title to that vessel passed to those heirs at law or to Edwin A. Stevens as the residuary legatee of Robert L. Stevens. On the 10th day of February, 1843, Robert L. Stevens entered into a contract with Mr. Upsher, the Secretary of the Navy, for the construction of a war
135 steamer for the United States Government for harbor defense, shot and shell proof, to be built principally of iron, upon a plan devised by Mr. Stevens. The vessel was to be built for a stipulated price, according to plans and specifications agreed upon, and to be completed within two years. Under this original contract there could be no doubt that the legal title to the vessel remained in Mr. Stevens until it was completed and delivered to, and accepted by, the govern-

ment. On the 14th day of November, 1844, a second contract, explanatory of the first contract, was entered into between Mr. Stevens and Mr. Mason, who had succeeded Mr. Upsher as Secretary of the Navy. After reciting the contract of February 10th, 1843, it was agreed that it should be modified and explained as follows: The time for the completion and delivery of the vessel was extended to two years from the date of the explanatory , the specifications were, in some respects, altered, and the manner in which the vessel was to be equipped more definately stated. It was further stipulated and agreed that the Secretary of the Navy should appoint, and that Mr. Stevens should admit within his establishment for building said war steamer, some person or persons, whose duty it should be to attend at the works of the said Stevens, and to receive and receipt for, on account of the Navy Department, all materials, of every description, which should be
136 delivered for constructing said war steamer, her engines and dependencies, which materials, when so received and receipted for, should be distinctly marked with the letters "U. S.," and should become the property of, and belong to, the United States; that the said Stevens' bills for labor and unwrought materials (already and hereafter to be rendered) should be certified for payment with the customary percentage of addition, and that the authority of the inspecting officer should not be understood to extend to the right to judge of the quality or fitness of the said materials, or the working of any part of them, but merely to the cost of the same; that the Navy Department should pay to said Stevens as the price of the said war steamer, when fully completed and delivered in conformity with the provisions of this contract, the sum of $586,717.84; that, as security for the faithful performance of his contract, the said Stevens should execute to the United States a mortgage upon certain specified real estate in Hoboken, with ample power to enter upon and sell the same in case of failure on his part to perform the contract; that, after bills certified to the amount of $500,000 had to be paid to Mr. Stevens, the balance of the contract price, if it was deemed necessary for the security of the government, should be withheld as further security for the execution of the contract by Mr. Stevens, and, in addition to the said mortgage
137 security, that, when the vessel should be fully completed in all respects, and duly delivered to, and received by, the agent of the United States, according to the terms of the contract, the balance of the contract price should be paid to Mr. Stevens, and his mortgage surrendered to him for cancellation. Mr. Stevens executed the mortgage called for by the contract, proceeded with the work upon the vessel, and, in 1856, before its completion, he died. In 1849 the government, having advanced $500,000 of the price, refused to make any further payment, and the work was, therefore, for a time suspended, but was again resumed in 1853. At the time of his death Mr. Stevens expended upon the vessel, which was then far from completion, over $113,000 of his own money, in addition to the sum of $500,000 received from the United States Government. By his will, dated in 1846, he made his brother Edwin A. Stevens his residuary legatee, and it is admitted that if the vessel was part of the estate of Robert L. Stevens it passed, under his will, to his brother Edwin. The general rule of law that, under a contract for building an entire vessel, no property vests in the party for whom she is built until she is ready for delivery, and has been accepted and approved by such party, is not controverted; but it is claimed that this case is taken out of the
138 general rule by the fact that this vessel was constructed under

the superintendence of the government; that payments were made upon her as the work progressed, and that, by the terms of the contract, materials for her construction were to be marked with the letters "U. S.," and to be the property of the United States.

The case relied upon to support this distinction is Scudder *v.* Calais Steamboat Company, 1 Cliff., 370, in which Justice Clifford relies upon the authority of Woods *v.* Russell, 5 B. & Ald., 942. In this State, in Elliott *v.* Edwards, 6 Vr., 265, it has been expressly held, contrary to the rule laid down in Woods *v.* Russell, that, in case of an executory contract to build a vessel, to be paid for in instalments as the work progresses, the title remains in the builder until the work is completed and delivered. This case was affirmed in our court of last resort (7 Vr., 449), and must be accepted as the law of this case. In Clarke *v.* Spence, 4 Ad. & El., 448, some importance is attached to the fact that the vessel was to be built under a superintendent appointed by the purchaser, on the ground that the builder was bound to deliver that particular vessel, and the purchaser was obliged to accept it, and that no other vessel could be delivered in performance of the contract. But the court in that case was constrained to observe that "until, however, the last of the necessary materials be added, the vessel is not complete—the thing
139 contracted for is not in existence—for the contract is for a complete vessel, and not for parts of a vessel; and we have not been able to find any authority for saying that whilst the thing contracted for is not in existence as a whole, and is incomplete, the general property in such parts of it as are from time to time constructed shall vest in the purchaser, except the above passage in the case of Woods *v.* Russell." It will be observed that there is a circumstance which distinguishes the case in hand from Clarke *v.* Spence. In that case the plan of the vessel was agreed upon, and the superintendent of the purchaser was present to see that proper materials were used and the specifications complied with, and the vessel was to be taken by the purchaser; there was to be no uncertainty in regard to that; while in this case, by the express terms of the agreement, the authority of the inspecting officer was not to extend to the right of the quality or fitness of materials, or of the workmanship of any part of them, but merely as to the cost of the same and of the labor actually applied to them. The mode in which the vessel was to be constructed to make it shot-proof was left to the judgment of Mr. Stevens, who, in the language of the chancellor, "was actuated by a desire to embody and illustrate his own ideas of naval architecture for the purpose of warfare." He undertook to build
a vessel which should be shot and shell proof against the artillery
140 then in use on board vessels of war, and the government, in the contract, took unusual care to secure itself against the contingency of loss in the event of his ideas proving to be a failure. Taking the whole contract together, it is manifest the government did not intend to become the owner of the vessel unless she was a success. She was not to be accepted by the government provided she was made to conform to a certain model, but only in the event that she should be capable of offering the resistance which the builder stipulated she should show under fire. Under the original contract it was so clear that the title pending the construction, would inhere in Mr. Stevens, that the parties, if any change had been intended in that regard, would have left no uncertainty about it in the explanatory agreement, which was drawn with so much care for the public interest. The mortgage which Mr. Stevens was required to execute upon very valuable lands, as security for the faithful performance of his contract, confirms this

view, and the provision that certain materials should be marked "U. S." and become the property of the government supports rather than weakens it, for if the ownership of the vesself itself was to be transferred it seems reasonable to presume that the declaration as to ownership would not have been limited to the materials. If it had
141 been the purpose of the explanatory agreement to vest the title in the government, it is reasonable to suppose that there would have been a clear expression to that effect, and that neither party would have been content to leave so important a matter to uncertain influence. Advances were to be made by the government to Mr. Stevens according to the amount of materials furnished for the work, and therefore they were marked "U. S.," to ascertain the progress of the work, so that the government would not pay faster than the work was done, and also to prevent any misappropriation of any such materials, by diverting them to other uses after the government had advanced money to the contractor to an amount based upon the value of such materials. This was a wise precaution. The payment' were not understood to have the effect of divesting Mr. Stevens of the title, because the contract expressly states the payment' were made in consequence of the security—that is, the mortgage given for the faithful execution of the contract. The reason for making the payment being declared in the contract to be in consideration of the security given by Mr. Stevens, no other intention can fairly be imputed to the contracting parties. The idea that the title passed out of the builder is also excluded by the language of the agreement, "that, when the said Stevens shall have fully completed the said war steamer, and when she shall have
142 been duly accepted by the agent of the United States, and the balance of the purchase price shall be paid, and the said mortgage surrendered." This language, used repeatedly in the contract, was certainly inapt, if it was understood that the title resided in the government. The delivery was to be that of the vessel in its complete state, and its acceptance was to be contingent upon its capacity to accomplish what its builder had promised, otherwise the right to reject it was unquestionable. That such was the interpretation put upon this agreement by the government may be fairly drawn from the history of the transaction. When the work was suspended, in 1849, by reason of the refusal of the Secretary of the Navy to make any further payments, the vessel was left in the possession of Robert L. Stevens, and after his death, in the exclusive possession of Edwin A. Stevens. There has never been any attempt on the part of the government to assert any title to the vessel, or to take possession of her. On the contrary, so far as appears, the inspecting officer of the government was withdrawn, and Robert L. Stevens, in his lifetime, after 1852, expended, of his own money, over $113,000, and, after Robert's death, Edwin expended over $89,000 in the work of completing the vessel, without any govern-
143 mental supervision or interference. I conclude, therefore, both upon the law applicable to the contract and upon the understanding fairly to be deduced from its terms, and the conduct of the parties to it, that, at the time of Robert L. Stevens' death, the title to this vessel was vested in him. The government had the right to recover its damages against the estate of Robert L. Stevens for breach of his contract, with power to resort to the collateral mortgage, and it may be, also, to an equitable lien on the vessel to enforce the penalty of the damages recovered. No construction of the contract more beneficial to the government can be made.

The resolution of Congress, upon which this controversy arises, must

be read with this understanding of the legal rights of the respective parties under the original and explanatory agreements. Edwin A. Stevens was permitted to remain in the exclusive possession and control of the battery during his lifetime. He made various proposals during the late civil war to complete the vessel for the United States Government, which resulted in the appointment of a board of examiners to inspect the vessel, and a report by a majority of them dated Dec. 24, 1861, that it was not advisable on the part of the government to finish the battery on the plans then proposed by Edwin A. Stevens. On the 17th of the following July the joint resolution in question was passed, as follows:

144 "A resolution releasing to the heirs at law of Robert L. Stevens, deceased, all the right, title, and interest of the United States in and to the Stevens Battery.

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That all the right, title, and interest of the United States in and to the Stevens Battery be, and the same are hereby, released and conveyed to the heirs at law of the said Robert L. Stevens or their legal representatives."

The government could not invest the heirs at law with the title to the vessel, because it had no title in itself; it had merely a right of action for damages. The words of the resolution are not apt to pass a right of action, and if they were, the word "release" would strongly indicate an intention to relieve the person against whom the right of action existed, and not to confer upon another the right to maintain suit against him. From 1849, when further advances were refused, up to 1862, when this joint resolution was passed, no attemp' had been made on the part of the government to enforce, against Mr. Stevens or his estate, its claim for damages, if any rightfully existed, and it is highly improbable that Congress would, under the circu'stances, have attempted to revive a stale claim, and have conferred upon the heirs at law of Robert
145 L. Stevens any right to involve his estate in litigation. I think that the purpose and effect of the resolution was to surrender any right which the government had to a completion of the battery, and to free Mr. Stevens' estate from all liability to damages for the non-performance of the contract. The result is that, under the will of Robert L. Stevens, the title to the battery vested in his residuary legatee. The decree, so far as appealed from, should be affirmed, with costs.

Decree unanimously affirmed.

(Indorsed:) Copy of opinion of court of errors & appeals.

146 *Petition.*

Supreme Court of the United States.

ANNA A. CLARKSON AND ROBERT L. CLARKSON, her husband, HARRIET WETMORE and GEORGE W. WETMORE, her husband, SAMUEL SANDS, JOSHUA SANDS, and JOHN SANDS, plaintiffs in error,

and

THE ATTORNEY-GENERAL OF THE STATE OF New Jersey, and MARTHA B. STEVENS, EDWIN AUGUSTUS STEVENS, JOHN STEVENS, ROBERT L. STEVENS, CAROLINE B. STEVENS, ALBERT STEVENS, RICHARD STEVENS, EDWARD P. C. LEWIS and MARY P. LEWIS, his wife, THEODORE F. RANDOLPH, governor of the State of New Jersey, and FITZ-JOHN PORTER, BENJAMIN G. CLARK, and WILLIAM W. SHIPPEN, as commissioners, SAMUEL B. DOD, and WILLIAM W. SHIPPEN, defendants in error.

To the honorable William Strong, justice of the Supreme Court of the United States:

The humble petition of Anna A. Clarkson and Robert L. Clarkson, her husband, Harriet Wetmore and George W. Wetmore, her
147 husband, Samuel Sands, Joshua Sands, and John Sands, the co-appellants of Mary Sands, in a cause in the New Jersey court of errors and appeals, respectfully show that their said co-appellant, Mary Sands, refused and still refuses to join with her said co-appellants, your petitioners, and that by an order of severance in said suit, dated the twenty-third day of June, A. D. 1879, your petitioners were allowed to bring this cause before this honorable court without joining the said Mary Sands, and without naming her in their writ of error hereto prayed for; and your petitioners respectfully show that your petitioners find themselves aggrieved by a final decree made in the court of chancery of the State of New Jersey, from which an appeal was taken to the said New Jersey court of errors and appeals, and on the hearing of said appeal the said decree was affirmed, and the record and proceedings remitted to the said court of chancery, where the same remains, being the highest court in which a decision could be had, and that there was drawn in question in said cause a title, right, privilege, and immunity claimed under a statute of the United States, and the decision of such highest court was adverse to the title, right, privilege, and immunity claimed by your petitioners, and that it so appears of record, and your petitioners further show that Anna A. Clark-
148 son and Robert L. Clarkson, her husband, are inhabitants of the State of Connecticut, Harriet Wetmore and George W. Wetmore, her husband, and John Sands are inhabitants of the State of New York, Samuel Sands an inhabitant of the State of New Jersey, and Joshua Sands an inhabitant of the State of Massachusetts, and that the said Martha B. Stevens, Edwin Augustus Stevens, John Stevens, Robert L. Stevens, Caroline B. Stevens, Albert Stevens, Richard Stevens, Edward P. C. Lewis and Mary P. Lewis, his wife, Samuel B. Dod, William W. Shippen, The Attorney-General of the State of New

Jersey, Theodore F. Randolph, Fitz-John Porter, Benjamin G. Clark, and William W. Shippen, commissioners, are all inhabitants of the said State of New Jersey. And your petitioners will ever pray.

W. L. CLARKSON,
Att'y of Petitioners.

149 (Indorsed:) United States Supreme Court. Anna A. Clarkson et al., plaintiffs in error, v. The Attorney-General of the State of New Jersey et al., defendants in error. In error. Petition. Walter L. Clarkson, att'y of pl't. in error, 85 Nassau st., New York. July 24, 1879. Allowed.

W. STRONG, *J.*

150 UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States to the honorable the court of chancery of the State of New Jersey, greeting:

Because in the record and proceedings, as also in the rendition of the judgment or decree in a plea which is in the said court of chancery, having been remitted to said court from the court of errors and appeals, in the last resort in all causes, of said State, before you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Martha B. Stevens, John Stevens, Edwin A. Stevens, Robert L. Stevens, Caroline B. Stevens, Charles Albert Stevens, and Richard Stevens, complainants and defendants, in the information in the nature of a cross-bill filed in said cause, and Theodore F. Randolph, governor of the State of New Jersey, Fitz-John Porter, Benjamin G. Clark, and William W. Shippen, as commissioners, and William W. Shippen, Samuel B. Dod, Mary P. Lewis, Edward P. C. Lewis, her husband, Robert Gilchrist, attorney-general of the State of New Jersey, James A. Stevens, Sophia L. V. C. Stevens, Esther B. Stevens, Juliana Conover, Mary Sands, Matilda Brown and John
151 G. Brown, her husband, Anna A. Clarkson and Robert L. Clarkson, her husband, Harriet Wetmore and George W. Wetmore, her husband, Joshua Sands, John Sands, and Samuel Sands, defendants in said suit, and also in said cross-bill, except the said attorney-general, who was informant in said cross-bill, wherein was drawn in question a right, title, privilege, and immunity claimed under a statute of the United States, and the decision was against the right, title, privilege, and immunity specially set up or claimed under such statute, manifest error has happened, to the great damage of the said Anna A. Clarkson and Robert L. Clarkson, her husband, Harriet Wetmore and George W. Wetmore, her husband, Samuel Sands, Joshua Sands, and John Sands, as by their answers appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of October next, in the said Supreme Court to be then
152 and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and custom of the United States, should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said

Supreme Court, the 24th day of July, in the year of our Lord one thousand eight hundred and seventy-nine.

S. D. OLIPHANT, *Clerk.*

153 (Indorsed:) United States Supreme Court. Anna A. Clarkson et al., plaintiffs in error, v. The Attorney General of the State of New Jersey et al., defendants in error. In error. Writ of error Walter L. Clarkson, att'y for pl'ts in error, 85 Nassau st., New York. July 24, 1879. Writ of error allowed.

W. STRONG, *J.*

Filed July 29, 1879. H. S. Little, clk.

154 UNITED STATES OF AMERICA,
District of New Jersey, Essex County, ss:

Frederick W. Ward, being duly sworn, on his oath saith that on the twenty-fifth day of August, in the year eighteen hundred and seventy-nine, he served the within citation on Alexander T. McGill, the solicitor of record of Theodore F. Randolph, governor of the State of New Jersey, Fitz-John Porter, and Benjamin G. Clark, three of the defendants in the cause in said citation named, by exhibiting said citation to him personally and informing him of the contents thereof, and by giving him a copy of said citation; that on the twenty-second day of August last past he served said citation on William W. Shippen, one of the defendants in said citation named, by exhibiting the same to him personally and informing him of the contents thereof, and giving him a copy thereof; that on the first day of September last past he served said citation on Leon Abbett, the solicitor of record of Martha B. Stevens, John Stevens, Edwin A. Stevens, Robert L. Stevens, Caroline B. Stevens, Charles Albert Stevens, and Richard Stevens, by exhibiting the same to him personally and informing him of the contents thereof, and giving him a copy thereof; that on the ninth day of September last past he served said citation on Samuel B. Dod, one of the defendants in said citation named, by exhibiting the same to him personally
155 and informing him of the contents thereof, and giving him a copy thereof.

And deponent further saith that due and legal service of said citation has been acknowledged in writing by Frederick B. Ogden, solicitor of Mary P. Lewis and Edward P. C. Lewis, two of the defendants in said citation named, and that the said acknowledgement of service was made by said Frederick B. Ogden on said citation in the presence of deponent, who saw him sign the same.

F. W. WARD.

Sworn and subscribed this 26th day of September, A. D. 1879, before me, at Newark, New Jersey.

[SEAL.] S. HOWELL JONES,
United States Commissioner, District of New Jersey.

UNITED STATES OF AMERICA,
District of New Jersey, ss:

Frederic W. Stevens, being duly sworn, on his oath saith that he saw Joel Parker, whose name is subscribed to the acknowledgments of service of the within citation for the governor of the State of New Jersey and the attorney-general of said State, sign said acknowledgments, and that said signatures are in his, the said Parker's, own handwriting.

F. W. STEVENS.

Sworn and subscribed this 11th day of October, A. D. 1879, before me, at Trenton, New Jersey.

[SEAL.] S. M. DICKINSON,
Notary Public, N. J.

156 The United States of America to Martha B. Stevens, John Stevens, Edwin A. Stevens, Robert L. Stevens, Caroline B. Stevens, Charles Albert Stevens, Richard Stevens; Theodore F. Randolph, governor of the State of New Jersey; and Fitz-John Porter, Benjamin G. Clark, and William W. Shippen, as commissioners, and William W. Shippen, Samuel B. Dod, Mary P. Lewis, Edward P. C. Lewis, her husband, and Robert Gilchrist, attorney-general of the State of New Jersey, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the court of chancery of the State of New Jersey, wherein Anna A. Clarkson and Robert L. Clarkson, her husband, Harriet Wetmore and George W. Wetmore, her husband, Samuel Sands, Joshua Sands, and John Sands are plaintiffs in error, and you are defendants in error, to show cause, if any there be, why the decree rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the
157 United States Supreme Court, this 24th day of July, in the year of our Lord one thousand eight hundred and seventy-nine.

W. STRONG, *J.*

Due and legal service of a copy of the within citation is hereby acknowledged this 22d day of August, A. D. 1879.

FRED'K W. OGDEN,
Sol'r for Mary P. Lewis & Edward P. C. Lewis.

(Indorsed:) United States Supreme Court. Anna A. Clarkson et al., plaintiffs in error, v. The Attorney-General of the State of New Jersey et al., defendants in error. In error. Citation. Walter L. Clarkson, att'y of pl'f's in error, 85 Nassau st., New York.

(In pencil:) Copy served on Wm. W. Shippen August 22, 1879. F. W. W.

Served copy on Leon Abbett Sept. 1, 1879. F. W. W.
" Alex. T. McGill, Aug. 25, '79. F. W. W.

158 Due and legal service of the within citation, and of a copy thereof, is hereby acknowledged this sixth (6th) day of September, A. D. 1879, for the attorney-general of the State of New Jersey.

JOEL PARKER,
Sol. & Att'y.

Due and legal service of the within citation, and of a copy thereof, is hereby acknowledged this sixth (6th) day of September, A. D. 1879, for the governor of the State of New Jersey.

JOEL PARKER,
Sol. & Att'y.

(Indorsed:) United States Supreme Court. Anna A. Clarkson et al., plaintiffs in error, v. The Attorney-General of the State of New Jersey et al. Citation. In error. Walter L. Clarkson, att'y of pl'ts in error, 85 Nassau st., New York.

159 Know all men by these presents that we, Reginald H. Smith and Howard Clarkson, all of the city and State of New York, are held and firmly bound unto the attorney-general of the State of New Jersey, and Martha B. Stevens, Edwin Augustus Stevens, John Stevens, Robert L. Stevens, Caroline B. Stevens, Albert Stevens, Richard Stevens, Edward P. C. Lewis and Mary P. Lewis, his wife, Samuel Dodd, and William W. Shippen, all of the State of New Jersey, in the full and just sum of two hundred and fifty dollars, to be paid to the said the attorney-general of the State of New Jersey, and Martha B. Stevens, Edward Augustus Stevens, John Stevens, Robert L. Stevens, Caroline B. Stevens, Albert Stevens, Richard Stevens, Edward P. C. Lewis and Mary P. Lewis, his wife, Samuel Dodd, and William W. Shippen, their certain attorneys, executors, administrators, or assigns; to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this eleventh day of March, in the year one thousand eight hundred and seventy-nine. Whereas lately at a term of the New Jersey court of errors and appeals, in a suit depending in said court between Mary Sands, Anna A.
160 Clarkson and Robert L. Clarkson, her husband, Harriet Wetmore and George W. Wetmore, her husband, Samuel Sands, Joshua Sands, and John Sands, appellants, and The Attorney-General of the State of New Jersey, and Martha B. Stevens, Edwin Augustus Stevens, John Stevens, Robert L. Stevens, Caroline B. Stevens, Albert Stevens, Richard Stevens, Edward P. C. Lewis and Mary P. Lewis, his wife, Samuel Dodd, and William W. Shippen, appellees a decree was rendered against the said appellants, and the said Anna A. Clarkson and Robert L. Clarkson, her husband, Harriet Wetmore and George W. Wetmore, her husband, Samuel Sands, Joshua Sands, and John Sands, having obtained a writ of error and filed a copy thereof in the clerk's office of the court of chancery of New Jersey to reverse the decree in the aforesaid suit, and a citation directed to the said appellees, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October next:

Now, the condition of the above obligation is such that if the said Anna A. Clarkson and Robert L. Clarkson, her husband, Harriet Wetmore and George W. Wetmore, her husband, Samuel Sands, Joshua Sands, and John Sands shall prosecute their writ of error to effect, and answer all costs if they fail to make their plea good, then the
161 above obligation to be void; else to remain in full force and virtue.

HOWARD CLARKSON. [SEAL.]
REGINALD H. SMITH. [SEAL.]

Sealed and delivered in the presence of—
JOS. M. BULGER,

STATE OF NEW YORK,
City & County of New York, ss:

On this eleventh day of March, A. D. 1879, before me personally came the within named Howard Clarkson and Reginald H. Smith, to me known to be the persons described in and who executed the foregoing undertaking, and severally acknowledged the execution thereof.

JOS. M. BULGER,
Notary Public, N. Y. City.

STATE OF NEW YORK,
City & County of New York, ss:

Howard Clarkson and Reginald H. Smith, all of the city and State of New York, being each duly sworn, does each for himself severally say that he is a resident and householder within this State, and is worth the sum of five hundred dollars over and above all debts and responsibilities he owes or has incurred.

HOWARD CLARKSON.
REGINALD H. SMITH.

Subscribed and severally sworn before me this 11th day of March, 1879, the words "and householder" interlined before execution.

JOS. M. BULGER,
Notary Public, N. Y. City.

162 (Indorsed:) United States Supreme Court. Anna A. Clarkson et al., plaintiffs in error, and The Att'y-Gen'l of the State of New Jersey et al., defendants in error. Copy. Bond for costs. Walter L. Clarkson, att'y for pl'ffs in error, 85 Nassau st., New York. Filed in clerk's office, court of chancery, N. J., with original bond, July 29, 1879. H. S. Little, cl'k.

163 In chancery of New Jersey.

The answer of the court of chancery of the State of New Jersey:

The record and proceedings of the plaint whereof mention is within made, comprising the original bill, the information, and all the pleadings on said information, the testimony, so far as the same relates to the war vessel designated in said proceedings as the Stevens Battery, the decrees in said cause, and all things concerning the same, I certify to the Supreme Court of the United States within specified, at the day and place within contained, in a certain schedule to this writ annexed, as within I am commanded.

THEODORE RUNYON, *C.*

I, Henry S. Little, clerk of the court of chancery of the State of New Jersey, do hereby certify that the foregoing is a true copy
164 of the record and proceedings mentioned in the foregoing return.

In testimony whereof I have hereto set my hand and the seal of said court of chancery this day of , eighteen hundred and seventy-nine.

[SEAL.] H. S. LITTLE, *Clk.*

(Indorsement on cover:) No. 88. Anna A. Clarkson & Robert L. Clarkson, her husband, Harriet Wetmore & George W. Wetmore, her husband, Samuel Sands, Joshua Sands, and John Sands, plaintiffs in error, vs. The Attorney-General of the State of New Jersey and Martha B. Stevens et al. New Jersey court of chancery. Remittitur. Filed 16th October, 1879.